

1 STATE OF SOUTH CAROLINA )

2 COUNTY OF RICHLAND )

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JUDICIAL MERIT SELECTION COMMISSION

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TRANSCRIPT OF PUBLIC HEARINGS

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BEFORE: SENATOR GEORGE E. CAMPSSEN, III, CHAIRMAN

9

REPRESENTATIVE BRUCE W. BANNISTER, VICE-CHAIRMAN

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SENATOR GERALD MALLOY

11

SENATOR GREG HEMBREE

12

REPRESENTATIVE MURRELL SMITH

13

REPRESENTATIVE J. TODD RUTHERFORD

14

KRISTIAN C. BELL

15

MICHAEL HITCHCOCK

16

JOSHUA HOWARD

17

ANDREW N. SAFRAN

18

ELIZABETH H. BROGDON, CHIEF COUNSEL

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\* \* \* \* \*

20

DATE: November 15th, 2016

21

TIME: 9:30 a.m.

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LOCATION: Gressette Building

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1101 Pendleton Street

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Columbia, South Carolina 29201

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REPORTED BY: PATRICIA G. BACHAND, COURT REPORTER

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(No Information Requested.)

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Court Reporter's Legend:

- dashes [--] Intentional or purposeful interruption
- ... Indicates trailing off
- [ph] Denotes phonetically written
- [sic] Written as said

1                   SENATOR CAMPSSEN: We are back on the record.  
2 We received legal advice from staff counsel, and no action  
3 was taken and no votes were taken.

4                   (Off-the-record discussion.)

5                   SENATOR CAMPSSEN: We are back on the record  
6 -- although it doesn't sound like it, but we are -- and  
7 we're ready for the first candidate this morning, Judge  
8 Mullen.

9                   MS. MULLEN: Good morning.

10                  SENATOR CAMPSSEN: Good morning. Welcome.

11                  JUDGE MULLEN: Thank you.

12                  SENATOR CAMPSSEN: Judge Mullen, please raise  
13 your right hand.

14                  WHEREUPON:

15                  THE HONORABLE CARMEN TEVIS MULLEN, being  
16 duly sworn and cautioned to speak the truth, the whole  
17 truth and nothing but the truth, testifies as follows:

18                  SENATOR CAMPSSEN: Have you had an  
19 opportunity to review your personal data questionnaire and  
20 sworn statement?

21                  JUDGE MULLEN: I have.

22                  SENATOR CAMPSSEN: Are they correct?

23                  JUDGE MULLEN: Yes, sir, they are.

24                  SENATOR CAMPSSEN: Does anything need to be  
25 changed?

1 JUDGE MULLEN: No.

2 SENATOR CAMPSSEN: Do you object to our  
3 making these documents, and any amendments, if applicable,  
4 a part of the record of your sworn testimony?

5 JUDGE MULLEN: No.

6 SENATOR CAMPSSEN: It will be done at this  
7 point in the transcript.

8 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION  
9 COMMISSION PERSONAL DATA QUESTIONNAIRE OF THE  
10 HONORABLE CARMEN TEVIS MULLEN)

11 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION  
12 COMMISSION SWORN STATEMENT OF THE HONORABLE  
13 CARMEN TEVIS MULLEN)

14 SENATOR CAMPSSEN: The Judicial Merit  
15 Selection Commission has thoroughly investigated your  
16 qualifications for the bench. Our inquiry is focused on  
17 nine evaluative criteria, and has included a ballot box  
18 survey, a thorough study of your application materials,  
19 verification of your compliance with state ethics laws, a  
20 search of newspaper articles in which your name appears, a  
21 study of previous screenings, a check for economic  
22 conflicts of interest.

23 We have received no affidavits filed in  
24 opposition to your election. No witnesses are present to  
25 testify. Do you have a brief opening statement you would

1 like to make at this time?

2 JUDGE MULLEN: Yes, sir. I want to first  
3 thank you-all for the opportunity to be here and address  
4 your questions. I think for our state Supreme Court to  
5 have credibility, our next justice must be a neutral  
6 interpreter of the laws. I think they need to rely on text  
7 and tradition. I think they need to love the law. But  
8 even more importantly, be able to leave their ego at the  
9 door and remember that they are a part of a multi-member  
10 bench. And the only effective way to make that bench work  
11 is to respect and understand the collegiality of the bar.

12 I appreciate being considered for this position.  
13 And I appreciate you-all allowing me to come address you.

14 SENATOR CAMPSER: Thank you. Please answer  
15 Counsel's questions.

16 MS. DEAN: Thank you, Chairman. I note for  
17 the record that based on testimony contained in the  
18 candidate's PDQ, which has been included in the record,  
19 with the candidate's consent, Judge Mullen meets the  
20 constitutional requirements for this position regarding  
21 age, residence, and years of practice.

22 EXAMINATION BY MS. DEAN:

23 **Q. Judge Mullen, why do you now want to serve as a**  
24 **judge on the Supreme Court?**

25 A. Well, first off, I think we need a member from

1 the Low Country on the Supreme Court bench, or the  
2 appellate court bench. I've had a wonderful ten years on  
3 the circuit court bench. I have had a wonderful career  
4 trying the criminal and civil cases, and I think I have  
5 something to lend certainly to the Supreme Court, based on  
6 my past experience. I think it would allow me to extend  
7 some of the work that I've done. I would love the  
8 opportunity to be able to do more research, and certainly  
9 writing. But I do think it's a natural progression of  
10 where I would love to go in my career, and certainly  
11 continue to serve the people of South Carolina.

12 **Q. Thank you, Judge. Judge Mullen, how do you feel**  
13 **of your legal and professional experience -- and we were**  
14 **kind of already talking about that, but if you could expand**  
15 **on that -- your legal and professional experience thus far**  
16 **will assist you in to being an effective judge on the**  
17 **Supreme Court.**

18 A. The Supreme Court, the majority of what they do  
19 is review errors of law of a lower court. I feel like I'm  
20 in a unique position to, before having come on the bench,  
21 have tried a lot of criminal and civil cases as a lawyer.  
22 I think I'm unique in that aspect. I served as a public  
23 defender where I tried hundreds of cases.

24 In criminal court, as well as a civil lawyer,  
25 I've had the opportunity to try everything from wreck cases

1 to complex construction litigation, contract litigation. I  
2 feel like I'm in a unique position, not only as a lawyer,  
3 but now as a judge, after ten years sitting on a bench, to  
4 have seen these cases, to know what happens in a lower  
5 court. I think oftentimes we forget where things are  
6 happening and where and how things unfold in court. I  
7 sometimes feel that in the appellate court level, they look  
8 for things that -- it just doesn't work in the real world,  
9 and it certainly doesn't work in a trial courtroom that  
10 way. So I think my past is so diverse, and so well skilled  
11 in a courtroom, that I think I have a lot to add to the  
12 bench.

13 **Q. Thank you, Judge. How would you describe your**  
14 **general judicial philosophy?**

15 A. I'm fair. That is the one thing that I can say  
16 coming into this. When I originally was elected, it was a  
17 hotly contested race. I take things as they are. I  
18 listen. And I think that's so important. I certainly  
19 don't have any preconceived notions. I'm willing to see  
20 someone else's side.

21 And my philosophy is just to be fair and make  
22 sure all litigants are afforded an opportunity to speak,  
23 and feel like they've had their day in court. Because so  
24 often that is so much what it is. Oftentimes people just  
25 need to be heard. Whether or not their side is right or

1 wrong, whether or not it follows the law, they just want  
2 the opportunity to state their peace, what their issues  
3 are. And I want to afford them that. That would be my  
4 general philosophy.

5 **Q. Thank you, Judge. Judge Mullen, what is your**  
6 **vision for the future of our judicial system, and what**  
7 **changes would you advocate, and why?**

8 A. I think we need a greater collegiality on the  
9 bench, and I think in particular the appellate court bench.  
10 Again, I think there's so much comment these days about  
11 judicial activism and judges stepping out, I think we need  
12 to step back and remember that we had a three-part system  
13 of the government, and our job as a judiciary is to  
14 interpret.

15 We don't write the law. We don't make the law.  
16 Our job is simply to interpret when necessary. And again,  
17 the Supreme Court's job is to correct errors of law at the  
18 lower court. It's not to make new law.

19 **Q. Thank you, Judge. And you were already kind of**  
20 **answering this question, but to what extent do you believe**  
21 **that a judge should or should not defer to the actions of**  
22 **the General Assembly?**

23 A. Well, we all know what our jobs are. And quite  
24 frankly, I think the General Assembly, in some rulings from  
25 the court, have spoken afterwards. They shouldn't have to.

1 They shouldn't have to go and make a new law after a court  
2 hearing when the Supreme Court is deciding they must.

3 Quite frankly, if the General Assembly hasn't  
4 spoke, I don't think it's the position of the court to be  
5 speaking. And again, that is not our job. We don't make  
6 law. We don't make new law. Our job is to defer and  
7 listen. Because again, you-all are publicly elected, you  
8 represent the people, you appoint me. But again, I don't  
9 represent the people. All I do is interpret what you tell  
10 me the law is. And that is our job.

11 So I guess, obviously, it's a deference. That's  
12 not our job. It's not our place.

13 **Q. Thank you, Judge. Moving now to the ballot box**  
14 **survey. The Commission received 443 ballot box surveys**  
15 **regarding you, with 57 additional comments. A ballot box**  
16 **survey, for example, contained the following very positive**  
17 **comments:**

18 **"Very respectful, detail oriented, professional,**  
19 **approachable, and an excellent jurist."**

20 **Thirteen comments expressed some level of**  
21 **concern. One of these concerns raised was your level of**  
22 **experience. What response would you offer to this concern?**

23 **A. I can't imagine what the experience level is, or**  
24 **what they expect. Again, I've had an extensive trial past.**  
25 **I've sat on the bench for ten years. Short of being 70**

1 years old, obviously, I think I have more than enough legal  
2 experience and diverse legal experience. I look back, I've  
3 clerked for a judge, I've worked for the House Labor  
4 Commerce and Industry Committee, where obviously you-all  
5 make the laws through the legislative council. I've served  
6 in numerous aspects in both civil and criminal litigation.

7 I can't imagine, short of maybe -- I didn't do  
8 much family law. But short of that, I can't imagine what I  
9 haven't done. I've done five death penalty cases. I have  
10 a very interesting circuit where we have varied, different  
11 types of litigation. And because we don't have a Master's  
12 in Equity in my rural circuits, we go from very complex  
13 litigation, with multi-defendants and millions of dollars,  
14 versus -- you know, we fight over heirs property where I'm  
15 from, or we have easement cases.

16 I just think I have an excellent, diverse  
17 background, where I haven't sat and just done or practiced  
18 one type of law.

19 **Q. Thank you, Judge. Another concern expressed was**  
20 **regarding your temperament. Can you please respond to**  
21 **that?**

22 A. I can tell you that, that shocked me. Because I  
23 think I'm known as to be pretty easy to be in front of.  
24 The only thing I can imagine is, is when people appear in  
25 front of you, someone wins and someone loses. And when

1 they lose, they don't like it. And I thought back when I  
2 was a younger lawyer, and answering the ballot boxes and  
3 responses, you know, typically, you don't write too many  
4 glowing reviews. You usually like to go ahead and write  
5 the ones that weren't so favorable or weren't so good.

6 I feel my temperament is excellent. I love being  
7 at work. I love my job. I'm grateful for being there, and  
8 enjoy it. You know, rarely, I think, does anything go  
9 wrong or have any type of effect to that. You know, we all  
10 say this, you know, at 5:30 at night everyone gets tired.  
11 And I appreciate that. And maybe -- it made me go back and  
12 think, once I saw that comment, you know, maybe I need to  
13 rethink pushing so hard.

14 I do handle a lot of cases, and I do work hard  
15 and I do work late. And sometimes it's better to get off  
16 the bench before five o'clock. And I certainly recognize  
17 that -- or not too far after that. So that would be my  
18 response.

19 **Q. Thank you, Judge. Now, moving to some**  
20 **housekeeping issues. Since submitting your letter of**  
21 **intent, have you sought or received the pledge of any**  
22 **legislator, either prior to this date or pending the**  
23 **outcome of your screening?**

24 A. No.

25 **Q. Have you asked any third parties to contact**

1 members of the General Assembly on your behalf, or are you  
2 aware of anyone attempting to intervene in this process on  
3 your behalf?

4 A. No.

5 Q. Since submitting your letter of intent to run for  
6 the seat, have you contacted any members of the Commission  
7 about your candidacy?

8 A. No.

9 Q. Do you understand that you are prohibited from  
10 seeking a pledge or commitment, directly or indirectly,  
11 until 48 hours after the formal release of the Commission's  
12 report, and are you aware of the penalties for violating  
13 the pledging rules?

14 A. Yes.

15 MS. DEAN: I would note for the record that  
16 the Low Country Citizens' Committee reported that Judge  
17 Mullen is qualified in the criteria of constitutional  
18 qualifications, physical health, and mental stability. The  
19 Committee reported that Judge Mullen is well qualified in  
20 the remaining criteria of ethical fitness, professional and  
21 academic ability, character, reputation, experience, and  
22 judicial temperament.

23 The Committee stated, "A superb jurist. Handles  
24 complex legal issues with ease. Very bright and highly  
25 personable."

1 I would just note for the record that any  
2 concerns raised during the investigation regarding the  
3 candidate were incorporated into today's questioning.

4 Mr. Chairman, I have no further questions.

5 SENATOR CAMPSSEN: Thank you. Does anyone  
6 have any questions for Judge Mullen? The senator from  
7 Horry.

8 SENATOR HEMBREE: Thank you.

9 SENATOR CAMPSSEN: Senator Hembree.

10 SENATOR HEMBREE: Thank you, Mr. Chairman.

11 EXAMINATION BY SENATOR HEMBREE:

12 Q. Good morning, Judge Mullen. How are you doing  
13 today?

14 A. Well, thank you.

15 Q. A couple of quick questions. I was curious, one  
16 of the things you mentioned as far as the future of the --  
17 or a vision for the -- for the bench would be build  
18 collegiality. I would like you to further elaborate on  
19 what -- you know, kind of elaborate on the problem, and  
20 what maybe directly -- I mean, what -- just from your  
21 perception, and maybe specifically what you might do or  
22 encourage others to do to address that problem.

23 A. That puts me in a tight spot. I will tell you  
24 that I don't think it's any secret over the years that our  
25 public courts have had some dissension. It's obvious in

1 the dissents that have been put out. You know, in looking  
2 at it, I truly believe a dissent needs to stand on its own  
3 legal footing, but also doesn't need to take jabs.

4 I think we as lawyers understand the purpose of a  
5 dissent, and we understand why they do it. And oftentimes,  
6 I think we even understand the rhetoric of what's involved,  
7 and that it's actually sometimes interesting to read.  
8 However, I don't think the general public takes it that  
9 way.

10 I think the general public understands that when  
11 you have one justice jabbing at another, or one justice  
12 saying that their opinion is idiotic or stupid, or some of  
13 the strong words that I think have come out, I think it  
14 makes us question the judiciary and the strength of  
15 judiciary, and really whether or not it's something that we  
16 need to follow.

17 You know, what we're asking the people to do: You  
18 pass the laws, we interpret them. We're asking the public  
19 to follow those laws. I think if you don't have a combined  
20 and strong judiciary, with opinions that state clearly what  
21 the facts are, or state clearly what the opinion is, I  
22 think it weakens the opinion.

23 You know, sitting in the spot I do, most of the  
24 time I hear dissents argued more than I hear majorities  
25 argued. Which, I understand there's a place for that. But

1 again, sometimes they're so strong that I think they it can  
2 affect, literally, the reading and the meaning of the  
3 opinion.

4 **Q. Do you have any ideas or suggestions on how to**  
5 **address that? I mean, how do you -- what would you do --**  
6 **what would you do, if you were elected to the court, to**  
7 **remedy that?**

8 A. I think -- I think everyone needs to put their  
9 ego behind them. I really think -- and, you know, I would  
10 really not call anyone in particular, but I think there is  
11 an arrogance. You know, you think about why is it  
12 difficult. You put that many people in a room who are  
13 incredibly bright, and obviously have big egos. I think  
14 everyone needs to be able to put that aside. I think they  
15 need to be able to walk in and say, "This is the job we  
16 need to do. This is our job that we need to do."

17 And opposed to trying to be the smartest justice  
18 in the room, or the smartest person in the room, I think we  
19 need to get together and write something that people can  
20 understand, that will give lawyers some guidance. And  
21 again, I think a lot of it -- I think a lot of it's  
22 personality.

23 **Q. Kind of following up on the -- going along this**  
24 **same line a little bit. Do you see, just from your years**  
25 **on the bench, and certainly as a lawyer, do you -- what**

1 would you say are the kind of the bigger -- and I get the  
2 collegiality. Are there any other issues that are facing  
3 the judicial branch, that, you know, either you would --  
4 could see the Supreme Court or court administration  
5 tackling, or the General Assembly tackling? And what might  
6 those be?

7 A. I do think that the circuit court needs more  
8 guidance on certain issues. Oftentimes, when there is a  
9 new ruling -- I know right now there are a number of cases  
10 going up to the Supreme Court, where you have got circuit  
11 court judges ruling one way and other judges ruling on  
12 another. It has to do with -- obviously, the sentencing of  
13 minors to life sentences, without any consideration of  
14 their age and youth.

15 If you actually went on a judicial Listserv --  
16 you know, we know what the law is. I know what the law is.  
17 I know how I have ruled in a case. And I have followed the  
18 law, where it states that if they are parole eligible, or  
19 if the parole board considers it, then that is sufficient.

20 I think our Supreme Court has been silent, and I  
21 wish they would go ahead and rule on that. I know that  
22 there's a number of cases up there -- and I certainly  
23 understand the time it takes to get there. But I think we  
24 need guidance, because I think as a circuit court bench, we  
25 look bad when we have judges, you know, ruling one way and

1 other judges ruling another way. And people I respect.  
2 It's just -- it's a difference of opinion. And we need  
3 that guidance.

4 **Q. There are a lot of good qualities that you've**  
5 **shared, that kind of distinguish you from some of the other**  
6 **candidates, and qualify you for this position. If you were**  
7 **to -- do you have a weakness that you feel like as a judge**  
8 **you'd like to -- you know, something that, you know, "This**  
9 **really is something I'm trying to work on"?**

10 **Is there anything that you would share with us,**  
11 **that's kind of a -- that would fall in that category?**

12 **A. I think as I stated before, I certainly am a hard**  
13 **worker. I push hard. I have not done a whole lot of**  
14 **family court. If there was anything I would feel more**  
15 **comfortable brushing up on, it certainly would be family**  
16 **law. But looking at the body of the work, there just isn't**  
17 **that many cases that come before the Supreme Court that are**  
18 **family law. And if you look at it, most of them are given**  
19 **to Justice Hearn or Justice Kittredge, who are both family**  
20 **-- you know, court judges. But it's something that I would**  
21 **like to certainly be well versed on, and better.**

22 **Q. Thanks, Judge Mullen. I appreciate your**  
23 **responses. Thank you for offering.**

24 **A. Thank you.**

25 **SENATOR CAMPSSEN: Representative Smith.**

1 REPRESENTATIVE SMITH: Thank you.

2 EXAMINATION BY REPRESENTATIVE SMITH:

3 Q. Good morning, Judge. How are you doing?

4 A. Good morning. Well, thank you.

5 Q. A couple things caught my attention when you were  
6 speaking, that I kind of would like to expound on them.  
7 And this is my phrase -- paraphrasing, and not yours. I  
8 understand this. But you talk about the court sometimes  
9 issue rulings, and doesn't understand what's going on, on  
10 the ground in the trial levels in the courts. Kind of  
11 expand on that a little bit for me, so I can understand.  
12 'Cause that's one thing I've been asking candidates for  
13 this position is, it seems to me that we -- the farther  
14 away you get from the practice of law in the courtroom, it  
15 doesn't really translate into some of their decisions and  
16 procedural issues and other -- I'll say this carefully --  
17 other orders that kind of infringe upon the legislative  
18 prerogative don't -- kind of interfere with what's going on  
19 in the real world in the courtroom. And I've seen -- I see  
20 that firsthand. And obviously, you alluded to that. And  
21 I'd like for you to expand on that for me, please.

22 A. I think what I've noticed lately -- and if you  
23 just go through, looking at decisions from the last,  
24 probably two or three years, you see a lot of cases getting  
25 reversed on factual basis; that's not where it should be

1 done. Because they were in the best position to hear the  
2 witnesses, to hear the testimony, to judge what has  
3 occurred.

4 And when a circuit court judge gets overturned by  
5 the Supreme Court, based on factual issues, it's not just  
6 the circuit court judge that didn't direct a verdict or  
7 didn't make findings, it's also twelve jurors. And you're  
8 telling twelve people from the community -- which, is the  
9 whole basis of our judicial system is based on the  
10 collective wisdom of our community members to decide  
11 something. And we all know that twelve heads are better  
12 than one.

13 And I think it's often difficult, and it should  
14 be difficult, to justify coming in after the fact, not  
15 having actually seen the trial, but just reading it in a  
16 transcript, and deciding based on that, that the twelve  
17 jurors got it wrong, the circuit court judge got it wrong,  
18 and between all of them they don't know what they're  
19 talking about, and "we see this or that."

20 And I just think sometimes they don't recognize  
21 how it translates. You know, what's printed on paper isn't  
22 necessarily what occurs. And you don't have the  
23 opportunity at that level to watch the demeanor of someone,  
24 how they act. So that would be a consideration and concern  
25 that I have, that I find all too frequently is happening

1 now.

2 **Q. All right. And the other issue that you brought**  
3 **out, which I think is important, is geographic diversity of**  
4 **the court. And tell me why you believe that should be**  
5 **taken into consideration.**

6 A. Obviously, we have three justices from,  
7 obviously, the Upstate, we've had Justice Hearn from the  
8 Pee Dee region. We need representation from the Low  
9 Country, because this bench is supposed to reflect our  
10 entire state. We haven't had anyone from our section in a  
11 long time.

12 And again, I think there are issues that are  
13 unique, that people could understand if they were from our  
14 area. And there's a current case right now on a appeal,  
15 waiting for cert in front of the Supreme Court, that I  
16 think if you had a justice who understood the problems of a  
17 particular area, or the way something is, I think there  
18 would be a fresh look at it, in not understanding the  
19 practical implications of it.

20 **Q. All right. Thank you.**

21 SENATOR CAMPSEN: Any other questions?

22 Senator Malloy.

23 EXAMINATION BY SENATOR MALLOY:

24 **Q. Good morning, Judge.**

25 A. Good morning.

1           **Q. I just have a general question as far as what do**  
2 **you -- what do you think has been your greatest**  
3 **accomplishment in your legal career and judicial career?**

4           A. That people think I'm fair. I feel good about  
5 not being the particular darling of either side of the Bar,  
6 of being known as a criminal judge or a civil judge. I  
7 think probably the greatest accomplishment is, is that  
8 people know and will walk in and try a case in front of me  
9 and know I'm fair. And I believe my reputation in the  
10 community is that of being fair.

11           I have a remarkable number of people willing to  
12 bench-try a case in front of me. Which all the lawyers  
13 understand is highly unusual. Most of the time they don't  
14 trust a judge, because a group of twelve will cut a verdict  
15 in half, or it will be easier to sway. It only takes one  
16 or just the opposite way in a criminal trial.

17           I am proud that I don't think people think I will  
18 lean either way. I think they know they're going to get a  
19 fair trial. I think they know I'm going to interpret the  
20 law and I'm going to apply it. I don't have any favorites.  
21 I just do my job. And at any point I feel like I can't do  
22 that, I will step down.

23           **Q. And my next question is: Do you believe that our**  
24 **current system that we have as far as disciplining lawyers**  
25 **and judges is fair? And if so, why or why not?**

1           A.    I have to tell you, I don't have a lot of  
2 experience in that.  Obviously, that's something that the  
3 members of the Supreme Court have to do.  I have the good  
4 fortune of not having to be too involved in that process,  
5 short of knowing Barbie Seymour.  I do think it's fair.  I  
6 do think they get it right.  I do think you've seen a  
7 pendulum swing to the court, now, where they are tougher on  
8 lawyers, certainly than they were -- than they were, you  
9 know, ten or twenty years ago.

10           I think that people understand for the public to  
11 have confidence in lawyers, we need to be able to police  
12 ourselves and to be able to sanction ourselves, and make  
13 sure that lawyers don't go and commit offenses against  
14 their clients.  Because again, we're counselors.  We're  
15 lawyers.  Our job is to take care of them.

16           As judges, I can tell you that I frequently see  
17 lawyers getting in trouble.  And sometimes it's substance  
18 abuse, sometimes it's depression.  And I think it's our job  
19 to step in and help them.  Certainly, I think our bar, and  
20 certainly our court, is proactive.  We don't want to see  
21 anyone falter.  We don't want to see anyone commit any  
22 errors.  We want to step in before that occurs.  And I  
23 think our bar does a good job of that.

24           **Q.    And I've asked others about the cost of**  
25 **administration and budget.  One of the difficult things**

1 that we have over here is when the Supreme Court comes over  
2 here to lobby for funds. Do you have an opinion as to how  
3 the cost of judicial administration could be handled?  
4 Should we use it as -- could we use a percentage of the  
5 General Appropriations Bill, as opposed to being funded on  
6 fees and fines and those kinds of things?

7 A. Well, it's nice to be doing that. I think it's  
8 very hard to explain to the public that a third branch of  
9 government has to hire a lobbyist and to pay a lobbyist to  
10 be able to go get the appropriations they need. I don't  
11 know if that's necessarily the best way to go about it, but  
12 it is the way that our leadership has decided to handle it.

13 I'd also find, we oftentimes are put into what I  
14 consider to be a very uncomfortable position when we're --  
15 we potentially are asked or are told to come see our  
16 legislators, you know, to obviously try to get funding or  
17 something along those lines. I think that's very tenuous.  
18 I think that's difficult. I think it's difficult for the  
19 judges. And I think it's especially difficult for you-all.  
20 You don't want to see your local judge, particularly if  
21 you're a lawyer, coming and saying, "We don't have enough  
22 money" or "we need raises in some way."

23 I would hope that there would be a better way to  
24 be able to figure that out. Again, we're a branch of  
25 government. We need to all do our jobs.

1           **Q. Is there any ideas on how the cost of judicial**  
2 **administration could be reduced?**

3           A. Some assignments, I would say, as far as travel  
4 is concerned, sometimes it seems nonsensical to me the way  
5 we are assigned. And that is not a criticism of the court  
6 administration, because they certainly have a very  
7 difficult task when you're putting that many people around.  
8 But it does seem to me that there can be a better use of  
9 travel money, for sure, and for costs and fees.

10           There are -- oftentimes, I wonder why I am  
11 driving and going to wherever, and I have a court reporter  
12 coming from the Upstate down to the Low Country, and it  
13 just doesn't make sense to me. I understand we need to  
14 travel the circuit. I understand that you don't want the  
15 same judge in front of the same people repeatedly. But I  
16 do think there are better ways. And I do think the judges  
17 are willing to travel, if necessary.

18           I know when we went through a terrible budget  
19 crunch, I called then Chief Justice Toal, and said,  
20 "Listen, if you need a judge to go hear something, I will  
21 go and I would never ask, you know, for travel money. I  
22 understand you need people."

23           And that put her in such a difficult position. I  
24 think she did a great job kind of gathering everyone's  
25 bootstraps, and saying, you know, "Our funds are low."

1           But I think there are some ways that we still  
2 could probably save some money.

3           **Q. In the death penalty cases that you've had, have**  
4 **you had any -- any cases to where the sentencing -- I mean,**  
5 **it was tried in the sentencing phase just by you alone as**  
6 **judge?**

7           A. Well, I have done -- no, not -- not as a bench  
8 trial. No, I have handled, as I said, five death penalty  
9 cases; four ended up in guilty pleas to life. The last one  
10 was tried, and the guilt phase was contested as well.  
11 Which is highly unusual. And usually that's a foregone  
12 conclusion, and now we're just talking about a sentencing  
13 phase.

14           But as far as that case is concerned, the jury  
15 came back with a life sentence. Which was interesting. In  
16 Beaufort County, we have a very diverse jury pool. People  
17 call me all the time, and say, "I've got a case coming up  
18 in Beaufort. Tell me what you've got."

19           And I will tell you, you could get someone over  
20 from Hilton Head, you know, who understands money, or is  
21 not concerned, and then you could have someone who is from  
22 the other side of Beaufort County, who, you know, thinks  
23 \$20,000 is all the money in the world. And then everyone  
24 with varying beliefs and values in the middle of it.  
25 Actually, I think it makes for a very good jury pool.

1 Q. And have you ever had any articles, events, or  
2 whatever, on your own behalf as to where you take a  
3 position on the death penalty, outside of being a judge?

4 A. No.

5 Q. One of the concerns I wanted to end up asking you  
6 about quickly, too, is that -- about access to the courts  
7 and legal help for our citizens as we continue to move  
8 forward. Do you believe that we -- that our citizens here  
9 in our state have access to the court, in general?

10 A. I believe we do. But I also believe our access  
11 is only as good as our judges. I think anyone that's tried  
12 a pro se case, or deals with pro se parties, knows that  
13 there are difficulties. But I got to tell you, in my  
14 experience most of the pro se parties are almost or better  
15 than some of the lawyers that appear in front of me.

16 I have been surprised, and pleasantly surprised,  
17 that I have some very educated, very learned people who  
18 represent themselves. And I think as a circuit court  
19 judge, my job is to give them time to articulate their  
20 position, to not cut them off -- you know, to respect them.

21 I think we could do better, certainly, in civil  
22 access. In civil cases, certainly. I know down where I'm  
23 from, we have Low Country legal aid, but they primarily  
24 service people in family court and having family court  
25 issues. You know, certainly, we have an excellent public

1 defender's office and a great public defender down in my  
2 circuit and across the state.

3 But I would say access, probably, to justice more  
4 in the civil arena is necessary. I think people have real  
5 problems in the simple fact that they say they can't afford  
6 to bring a case, simply because they can't afford a  
7 lawyer's fees, is a problem.

8 **Q. And do you think we have language access barriers**  
9 **in the -- in the trial court bench? And if so, what do you**  
10 **think we do about that from our Supreme Court?**

11 A. Language barriers? I think definitely. I can  
12 tell you I'm in the middle of trying a case right now,  
13 where I think there are problems. My circuit is definitely  
14 -- you know, not unique to a very large Spanish-speaking  
15 population. And it's difficult.

16 Additionally, you have pro se plaintiffs and  
17 defendants, you know, who are not versed on the law. You  
18 know, as judges our job is to tell them what the rules are,  
19 to give them a copy of the rules, and make them understand  
20 that they're responsible for them. But I think we do have  
21 problems.

22 **Q. And just the basic interpreter.**

23 A. Absolutely.

24 **Q. And so I think that last year we put about a**  
25 **hundred thousand dollars in the budget for -- for**

1 **interpreters. Do you think that the court needs more than**  
2 **that with the -- with the growing population of non-**  
3 **speaking English speaking?**

4 A. Absolutely. I can tell you that I listened to  
5 testimony yesterday, it was a Jackson v. Denno hearing -- I  
6 can't talk about it too much in the middle of trial -- but  
7 I have an officer who is Spanish-speaking, along with an  
8 English-speaking officer, interrogating a gentleman. And  
9 you talk about it, you know, this is an interpretation.  
10 This is not a verbatim translation. You have to remember  
11 the difference. And you have to understand that the  
12 cultural differences, the way some things are stated,  
13 differ and matter.

14 And in my case, it's that much more compounded.  
15 But it's a CSC case with a -- of a minor and late  
16 disclosure; the only evidence you have is witness  
17 testimony, and that is it. And it's important that  
18 everyone in the courtroom, including myself and the twelve  
19 jurors, understand what in the world it is that this  
20 defendant has said in his statement to the police -- or in  
21 this case three statements to the police -- about what did  
22 or didn't occur.

23 Q. I've asked the others. and I think you've already  
24 touched upon it, about the question about unanimous  
25 decisions, and the fact that we've had split decisions and

1 dissent. And you may have already answered it, but I just  
2 wanted to get clear as to what would you do to try to avoid  
3 the 3/2 split decisions, or whatever. And I think you  
4 mentioned earlier, to try to create some harmony on the  
5 court.

6 A. That's when you have to go back to the text. I  
7 think that's -- again, I think sometimes when you read the  
8 split decisions, they're based on politics versus  
9 necessarily what the actual law is. And I think everyone  
10 needs to go back to that.

11 I think when you clearly look at it and you  
12 clearly analyze and -- you know, we talk about, well, the  
13 Legislature must have intended this. Well, it says what it  
14 says. And that's what the intention is. And I think  
15 that's so important. And I think everyone needs to be  
16 brought back to that and reminded.

17 And again, it's -- that whole idea of not letting  
18 your ego get in the way, being able to say, "You know what?  
19 You're right," and we can all agree that this is what it  
20 says. This is, you know, what is intended. And they  
21 didn't go any farther than that.

22 Q. Speaking of other legislation, do you believe  
23 that the Supreme Court has the power to issue a writ of  
24 mandamus against the General Assembly, or any member, in  
25 order to get the Legislature to perform or not perform a

1 **certain action?**

2 A. Well, I think they did that in Abbeville. I  
3 think that's what they did in the Abbeville case. Without  
4 doing too much, I mean, obviously, I am not allowed to  
5 comment. But I would say no, I don't think they have the  
6 power to -- and again, it goes back to, you look at the  
7 Constitution, it's six pages; one page is the signatures,  
8 and four of it is the division of government. And that's  
9 the purpose. That's what our Framers focused on was the  
10 division. It wasn't necessarily the individual rights.

11 And that's the only way our system of government  
12 works. And again, one can't step on the other. The  
13 separation of powers is what is our checks and balances,  
14 it's what's important and keeps this democracy working.  
15 And it's the only way it will work.

16 **Q. Thank you.**

17 SENATOR CAMPSSEN: Any other questions?

18 (Hearing none.)

19 EXAMINATION BY SENATOR CAMPSSEN:

20 **Q. Judge, you just mentioned the separation of**  
21 **powers and why it makes a democracy work. Why is it so**  
22 **important?**

23 A. Because the idea is that you don't want to have  
24 one branch have too much power. The whole idea is that we  
25 are a people. And we are governed by our people. And

1 again, we can't -- as branches are powerful between the  
2 executive, the legislative, we need to let the people  
3 speak. That is where your power is. And that's where it  
4 should come from. And for any one group to step on the  
5 toes and take over the entire power of the republic, it is  
6 frightening.

7 I mean that's why they left. That's why they  
8 came here, and that's why we established our Constitution.  
9 That's why it's lasted this long, and that's why it is that  
10 good; that they understood that tyranny didn't work, they  
11 understood what was necessary to keep us going. And  
12 without it, I mean, we would have crumbled before now, and  
13 could crumble.

14 **Q. I want to ask you a couple questions that I've**  
15 **asked all the candidates. I'm not singling you out. But**  
16 **do you believe it is the duty of the Supreme Court to**  
17 **interpret the words of the Constitution only according to**  
18 **the meaning they had when the Constitution was adopted?**

19 A. There's a debate, obviously. You know what the  
20 sides are. I think and believe that we can go back to more  
21 strict constructionism. And I think we need to leave it to  
22 the states to determine what it is that they find  
23 appropriate.

24 Again, you can look at the Constitution -- and  
25 the values that are enumerated in that, of course,

1 reflected the time -- but be able to respect that. I think  
2 oftentimes now we are trying to extend that. You know, we  
3 talk about, and you hear the U.S. Supreme Court talk about  
4 the evolving sense of decency. I am probably of the more  
5 neutral view that, as time goes by, those issues are more  
6 properly decided by the states, and the will of the people  
7 in the states are the ones that should determine that. And  
8 again, taking away from the judiciary and making a law.  
9 Which, again, is not our job.

10 **Q. Do you believe that -- do you believe the Supreme**  
11 **Court has the power to order remedial legislative action in**  
12 **a case or controversy that it hears against the state?**

13 **That we're in a --**

14 A. Do I believe they should --

15 **Q. Yeah.**

16 A. -- or could?

17 **Q. Can they? Can the -- can the -- can the Supreme**  
18 **Court order remedial legislative action in order to satisfy**  
19 **a case or controversy brought against the state?**

20 A. Well, accordingly -- they currently do think they  
21 do. I don't think, again, that, that's their job. I think  
22 -- again, I think it's an infringement on the separation of  
23 powers. Again, it's one body of the three, telling someone  
24 else what they must do, and that something is not  
25 satisfactory. I don't think that's our position. Again, I

1 think it's our decision to interpret what is there.

2 **Q. What in your opinion are types of policy matters**  
3 **that are non-justiciable political questions?**

4 A. Non-justiciable political questions? Well,  
5 obviously, I don't think we have any business dealing in  
6 any type of religious matters. Certainly, other than let -  
7 - other than elections, which obviously we have some direct  
8 appeal to be able to go listen to particular challenges, I  
9 don't think we should be in the political arena.

10 I mean, the whole idea of being a judge is that  
11 you aren't political. You shouldn't know, when you walk  
12 into a courtroom, the way a judge is bent. Their belief  
13 should have no bearing on what they do; their job is to  
14 interpret the law.

15 SENATOR CAMPSSEN: Any other -- any other  
16 questions?

17 SENATOR MALLOY: I have one.

18 SENATOR CAMPSSEN: Senator Malloy.

19 SENATOR MALLOY: Thank you, Mr. Chairman.

20 RE-EXAMINATION BY SENATOR MALLOY:

21 **Q. Judge Mullen, I worked on a sentence reform**  
22 **package here in 2010, that most people are familiar with.**  
23 **And what I'm interested in is just seeing if you know of --**  
24 **and you may not know, because there's nothing really said -**  
25 **- but any criteria that you would use in deciding on**

1 whether to affirm sentences outside of the standard range,  
2 as an appellate judge. Because what we've done is that  
3 we've gone to A -- basically, a lot of non-violent with no  
4 --

5 A. Right.

6 Q. -- prison terms. And obviously they have these  
7 models, and we don't have a trial bench sentencing book --

8 A. Right.

9 Q. -- to try to see. Because one of the concerns  
10 that I have -- and I missed some of this yesterday, and so  
11 I'm just curious -- is that a plea agreement was not the  
12 same thing as a plea in Horry and a plea in Spartanburg or  
13 Chesterfield or whatever.

14 A. Or a plea in front of Judge X is not the same as  
15 a plea in Judge Y, even in Greenville.

16 Q. Right. So when it gets to the -- when it gets to  
17 the Supreme Court, and you're there to -- someone has a  
18 appeal as to a sentence that may be outside the range of  
19 any criteria, if you -- if you know -- and maybe -- and  
20 maybe there is none, but have you looked at it to see if  
21 it's harsher under the circumstances and it's hard to go  
22 and look back. But any thoughts on that?

23 A. I think it is hard to go look back. I -- I think  
24 you need to trust your judiciary, that they know what  
25 they're doing at the time. But that's said, though, we all

1 appreciate and understand that there is judge talking.  
2 Certainly there are people who would rather plead guilty in  
3 front of Judge X or Y. And I think as a circuit court  
4 judge, it's no secret that people tend to be harsher  
5 sentencers in their own circuit, because this is where they  
6 live.

7 I don't think that you necessarily want to hem in  
8 judges, but I do think that there are extreme sentences.  
9 And I can tell you as judges, we recognize them.  
10 Certainly, if someone gets a very harsh sentence for  
11 something that we don't consider necessarily a violent, I  
12 think it's a difference, possibly, of opinion. And I think  
13 there are times where you can say that just seems  
14 completely out of the realm of what's appropriate.

15 For me, I am very concerned -- and maybe it's just my  
16 background in having done criminal work -- that I think  
17 there's a large opportunity, from the time you are  
18 arrested, if you are released, to better yourself. I think  
19 there is a great opportunity. And particularly for  
20 youthful offenders, I want to see someone get their high  
21 school degree. I want to see them go through drug  
22 rehabilitation. I want to see them go volunteer at their  
23 church, at the local humane society. You show me you're  
24 doing something to better yourself, and that this was an  
25 aberration, that's going to make a big difference for me.

1           I don't want them to necessarily be hemmed. And  
2 I think a good example of this is when you have young  
3 people who maybe get charged with burglary first or armed  
4 robbery, very serious offenses -- of course we all respect  
5 and understand that. But when you have someone who maybe  
6 has never done it in their life, and if we are hamstrung by  
7 what a specific sentence is -- I mean, I have literally had  
8 to sentence people, and say, "You have done so well. I  
9 understand this is an aberration. Everyone in your family,  
10 your pastor, everyone has come to talk to me. And  
11 certainly you have appeared and you are a good person and  
12 this is one night. And this doesn't define you."

13           But again, that's why I think that on that level,  
14 unless it is something that I would consider to be weighed  
15 one way or the other, I think you really have to give  
16 deference to the judge. I think the judge sees it all,  
17 asks it all. They have a chance to weigh.

18           You know, obviously, everyone's mother loves them  
19 in court, and says they're a good person, but when you can  
20 put 25 people in my courtroom who can talk about not just  
21 that night, but leading up to that night, and then after, I  
22 think that makes a difference. And it makes a difference  
23 for me, certainly in the sentencing. And I have the  
24 opportunity as the circuit court judge to see that, to  
25 witness it, and to see if these people are truthful, and to

1 be able to, you know, take that into account.

2 Q. Well, and as a -- as a concluding statement, I  
3 want to personally thank you. And on behalf of our state,  
4 thank you for taking the Stinney case, and having the  
5 courage to go down and try that case over again. Because  
6 it's a case that you did not have to take, I realize that.  
7 And you don't have to comment, unless you want, but I just  
8 want to end up thanking you for doing that. Because that  
9 was a look back. And it was a necessary look back.

10 A. Thank you.

11 SENATOR CAMPSSEN: Any questions? Mr.  
12 Safran.

13 MR. SAFRAN: Thank you, Mr. Chairman.

14 EXAMINATION BY MR. SAFRAN:

15 Q. Good morning.

16 A. Good morning.

17 Q. Just a couple quick questions.

18 A. Yes, sir.

19 Q. I heard you say that there is -- needs to be, I  
20 guess, a stopping point from getting to the -- where you  
21 are making law. How do you distinguish between that and,  
22 more or less, adopting an argument that may be a different  
23 spin or a different take on a statute or a proposition that  
24 might not have been considered before, but might not be  
25 part of the norm in terms of how we practice day to day?

1           A.    I guess the question is how far you want to  
2 extend it.  I go back to what I believe the Legislature  
3 intended.  Sometimes it just requires you to say, "No,  
4 that's not what they intended," and let you-all do your  
5 job, which you've done in many cases, where a judge has  
6 said, "I can't go any further.  This is not what was said."

7                   And then we have to leave it to you.  You know,  
8 certainly, we did that in the LJ cases and the Auto-owner's  
9 cases; they had to turn around and give it back to you and  
10 say, "You need to fix this.  You need to spell it out for  
11 us."

12                   Again, it's -- I say we need the guidance from  
13 the Legislature.  You need to tell us.  You need to give us  
14 the law.  Again, our appellate courts need to interpret it  
15 so the underlying courts can follow it, and say, "This is  
16 it" and have some security.

17                   And so there's a consistency, I think that's just  
18 so important.  I think people need to know what to expect  
19 in the law.  They need to know what they have to answer  
20 for.  And I think that's important.

21           **Q.    So am I understanding that, basically, the**  
22 **appellate court's really -- it's not their job, or even**  
23 **within their prerogative, to consider looking at a novel or**  
24 **a creative argument?**

25           A.    Well, of course they do.  They always take up

1 novel issues of law. And I can tell you, in going to look  
2 -- in this process of looking at the cases, you know, I've  
3 been reversed on a handful of cases. And I can tell you  
4 that out of a handful of cases, four out of five were novel  
5 issues of law, where again, I as a circuit court judge  
6 wasn't going to step over that line, because that was not  
7 the line.

8 I think it's different as an appellate court  
9 judge. And I respect the positions and understand the  
10 difference. And I understand there were things that needed  
11 to be questioned. And again, after the Supreme Court  
12 rulings, I trust that, if necessary, you-all do your job to  
13 go ahead and change it, if necessary.

14 **Q. As the Supreme Court predominantly does consider**  
15 **novel issues of law, or things that shouldn't be the norm -**  
16 **-**

17 A. Right.

18 **Q. -- are you envisioning an adjustment in your way**  
19 **of thinking when confronted with that, as opposed to what**  
20 **you're dealing with day to day on the circuit bench, where**  
21 **you have a reluctance to maybe want to go that route?**

22 A. It depends on if our job is to give guidance.  
23 And again, I stated before, I do think that the Supreme  
24 Court needs to speak on some issues to be able to give the  
25 lower court guidance. I don't think I'm going to have a

1 problem with that. I just simply know where I am at this  
2 point in my bench, and I know where I am supposed to be and  
3 how I'm supposed to rule.

4 You know, I'm not saying I haven't interpreted  
5 things that the Supreme Court or the Court of Appeals, you  
6 know, hasn't disagreed with me. You know, oftentimes in  
7 going through and looking at it, the Court of Appeals  
8 reverses me and the Supreme Court reinstates, you know.

9 So again, I don't think I'm afraid to step where  
10 I need to step, and where I think I'm within my bounds to  
11 step. But again, when you look at really what the Supreme  
12 Court does, the -- really, majority of it is to correct  
13 errors of law at a lower level. You know, if you went down  
14 and looked at the percentages, the novel issues -- which  
15 they do, of course. And they touch on it. And again,  
16 we're grateful for on my bench -- are relatively small  
17 compared to the errors of law.

18 **Q. Thank you.**

19 **A. Thank you.**

20 SENATOR CAMPSEN: Any further questions?

21 (Hearing none.)

22 SENATOR CAMPSEN: Okay. Thank you, Judge  
23 Mullen. This concludes the portion of -- this portion of  
24 your screening process. As you know, the record will  
25 remain open until the formal release of the report of

1 qualifications, and you may be called back at such time if  
2 the need arises. I thank you for offering. And I thank  
3 you for your service to South Carolina.

4 JUDGE MULLEN: Thank you, all. I appreciate  
5 being here. Thank you.

6 SENATOR CAMPSEN: We'll take a five-minute  
7 break.

8 (A recess was held from 10:52 a.m. to 11:14 a.m.)

9 SENATOR CAMPSEN: I call the meeting back to  
10 order. If the members would have their seats, please. And  
11 the staff will bring in the next candidate.

12 Mr. Nichols. Welcome.

13 MR. NICHOLS: Thank you, Mr. Chairman, and  
14 members of the Commission.

15 SENATOR CAMPSEN: Thank you. If you please  
16 raise your right hand.

17 WHEREUPON:

18 JOHN SHANNON NICHOLS, being duly sworn and  
19 cautioned to speak the truth, the whole truth and nothing  
20 but the truth, testifies as follows:

21 SENATOR CAMPSEN: Have you had an  
22 opportunity to review your personal data questionnaire and  
23 sworn statement?

24 MR. NICHOLS: Yes, sir.

25 SENATOR CAMPSEN: Are they correct?

1 MR. NICHOLS: Yes, sir. I sent an amendment  
2 to my personal data questionnaire last week; you should  
3 have received it.

4 SENATOR CAMPSEN: Okay. Do you object to  
5 making these documents and the amendments part of the  
6 record of your sworn testimony?

7 MR. NICHOLS: No, sir. I do not object at  
8 all.

9 SENATOR CAMPSEN: It will be done at this  
10 point in the transcript.

11 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION  
12 COMMISSION PERSONAL DATA QUESTIONNAIRE OF JOHN S.  
13 NICHOLS)

14 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION  
15 COMMISSION PERSONAL DATA QUESTIONNAIRE AMENDEMENT  
16 OF JOHN S. NICHOLS)

17 (EXHIBIT NO. 3 - JUDICIAL MERIT SELECTION  
18 COMMISSION SWORN STATEMENT OF JOHN S. NICHOLS)

19 SENATOR CAMPSEN: The Judicial Merit  
20 Selection Commission has thoroughly investigated your  
21 qualifications for the bench. Our inquiry has focused on  
22 nine evaluative criteria, and has included a ballot box  
23 survey, a thorough study of your application materials,  
24 verification of your compliance with state ethics laws, a  
25 search of newspaper articles in which your name appears, a

1 study of previous screenings, a check for economic  
2 conflicts of interest.

3 We have received no affidavits filed in  
4 opposition to your election. No witnesses are present to  
5 testify. Do you have a brief opening statement you would  
6 like to make at this time?

7 MR. NICHOLS: Very brief, Mr. Chairman. I  
8 want to thank you and the members of the Commission for the  
9 opportunity to be here today. I'm joined, today, with my  
10 wife, Michelle -- my wife of 23 years -- and members of my  
11 firm, and my assistant, Erin Bridges, who keeps me on track  
12 at the office.

13 SENATOR CAMPSER: Okay. Please answer  
14 questions of council.

15 MR. GENTRY: Mr. Chairman, I note for the  
16 record that based on the testimony contained in the  
17 candidate's PDQ, which has been included in the record,  
18 with the candidate's consent, Mr. Nichols meets the  
19 constitutional and/or statutory requirements for this  
20 position regarding age, residence, and years of practice.

21 EXAMINATION BY MR. GENTRY:

22 **Q. Mr. Nichols, why do you now want to serve as a**  
23 **justice on the Supreme Court?**

24 A. Thank you, Mr. Gentry. The reason is because I  
25 love the law. I love what I do in the law. And this is an

1 opportunity for me to serve people of South Carolina, in a  
2 capacity that I thoroughly enjoy, and really to help move  
3 the court forward and make it be the best court it can be.  
4 I believe that I have -- I understand fully what it takes  
5 to do that job right. And this is my opportunity to do  
6 that.

7 **Q. How do you feel your legal and professional**  
8 **experience thus far will assist you to become an effective**  
9 **Supreme Court justice?**

10 A. Well, and it's -- as you can see from my  
11 background, I worked for ten years, my first ten years at a  
12 law school, for the Court of Appeals. And I've had various  
13 jobs there. I was a chief staff attorney for a good  
14 portion of that -- a good portion of that time. I also  
15 have had the opportunity to clerk with Chief Judge Alex  
16 Sanders and Chief Judge Randall Bell and retired Chief  
17 Justice Bruce Littlejohn, so it was three different types  
18 of clerking opportunities there.

19 And I got to see -- I worked on about a thousand cases  
20 during that ten-year period -- almost ten-year period.  
21 After that I focused my practice almost entirely, now, on  
22 appellate practice. I mean, I've done litigation. I have  
23 litigated in every kind of court. I've tried a case in  
24 magistrate's court and in the administrative law court --  
25 Judge Geathers was my judge, a judge which I thoroughly

1 enjoyed -- common pleas, general sessions, the district  
2 court.

3 I argued over a hundred cases in the Court of  
4 Appeals, briefed and argued. I've argued about sixty in  
5 the Supreme Court, or briefed those cases. I've handled  
6 every kind of case that could come before the Supreme  
7 Court, either by a certified question from the district  
8 court. I am handling the case -- a case right now in the  
9 court's original jurisdiction. I've done extensive  
10 motions' practice before that court, and so I understand  
11 that.

12 And I've worked with the Supreme Court, in the  
13 Supreme Court's Institute for Teachers, where Blake Hewitt  
14 and I would go and observe several oral arguments, and then  
15 we would participate in assisting the teachers in getting  
16 ready for moots and things like. And we'd read the briefs  
17 in advance, and then -- and then discuss with them.

18 I've written on appellate practice. I've written  
19 a -- given number of CLEs. I was on the editorial staff of  
20 Chief Justice Toal's appellate practice book, for all three  
21 times it's been published. So this is the area of law that  
22 I have concentrated my practice throughout my time.

23 I do other things, as you can see from my -- from  
24 my PDQ, but this is really what I love in the law.

25 **Q. How would you describe your general judicial**

1 **philosophy?**

2 A. A couple of different ways. I think that --  
3 well, first off, I think that -- and I'll answer a couple  
4 of ways. A demeanor of a judge is important. A judge must  
5 be -- must listen. A judge must be prepared to decide the  
6 particular dispute between the parties that's before the  
7 court. I believe that a judge needs to adhere to the law,  
8 as the General Assembly sets forth, as precedent sets  
9 forth.

10 And there are times, whenever a Supreme Court  
11 justice has to judge the constitutionality of a law, but  
12 that should be done with restraint. A judge is a judge,  
13 and they do not express policy. The policy is made over in  
14 that building across the street, across the way.

15 **Q. What is your vision for the future of our**  
16 **judicial system, and what changes would you advocate, if**  
17 **any, and why?**

18 A. Well, and I think that our judicial system, we --  
19 we have one of the hardest working judicial systems in the  
20 country. I mean, numbers-wise, our judges handle a lot of  
21 matters. Our Supreme Court, over the last several years,  
22 has really been sort of drifting towards becoming a cert  
23 court, which -- you know, answering questions for the  
24 district court, or reviewing Court of Appeals decisions, or  
25 handling disciplinary matters. Those kinds of things.

1 I think that the Supreme Court ought to continue  
2 that way and let the Court of Appeals be the error-  
3 correcting court. Things come to the appellate court with  
4 the presumption of correctness, though. And a -- an  
5 appellate judge needs to exercise restraint before  
6 reversing what happened at trial, either by a jury trial or  
7 a non-jury trial, as long as the parties have presented the  
8 case to the lower court and gotten rulings and things like  
9 that. I think that is the way an appellate court ought to  
10 act.

11 I do think that the court should continue its  
12 trend towards technology. Right now you can go watch oral  
13 arguments streaming live, or you can go watch archived  
14 arguments. That is a wonderful feature. Not all states  
15 have that. In fact, very few. We can go on cTrack and  
16 look at and pull briefs and records and cases, so that a --  
17 if I'm interested in a case that's coming before the court,  
18 I can go look at it and see how the parties presented it.

19 At times, I'm asked to write an amicus brief on  
20 behalf of a position. It's very easy for me to obtain the  
21 briefs from the public records. So I think that our court  
22 continues on a really good track towards modernizing.  
23 We're going to, hopefully, go with the e-filing soon --  
24 which we're doing it before circuit now. But as far as the  
25 state courts, I'd like to see the court continue with that

1 direction.

2 I'd also -- and this is sort of a relic from when  
3 I clerked for Judge Sanders, I'd like to see the court on  
4 occasion take the court on the road. And I realize that's  
5 an expense, and that's probably not going to happen. But  
6 when I clerked for Judge Sanders, we heard cases at the  
7 Citadel, at the Honor Court, and to see the local lawyers  
8 that -- they compiled a roster from cases locally, to see  
9 the local lawyers be able to come in and see the citizens  
10 be able to come in and see their court in action, I thought  
11 was a wonderful thing.

12 I know that the court's taken it -- they've gone  
13 to the law school on occasion and things, but it would --  
14 you know, and that's -- that's sort of a -- I don't want to  
15 say that's a dream, but that is something that I would like  
16 to see them do. But as far as continue -- I'd like to see  
17 them handle cases a little -- with a little bit more timely  
18 fashion.

19 And that may require reallocating resources they  
20 have, staff attorneys or law clerks. In the end, though,  
21 the judges have to make the decision. I mean, you don't  
22 want to delegate that judicial duty to a staff person. But  
23 right now, that court, I would like to see their decisions  
24 come out a little bit more quickly.

25 I'd also like to see the court -- and the court

1 is in charge of disciplining lawyers. There are two bodies  
2 of law that they look to: the Rules of Professional Conduct  
3 and Rules for Lawyer Disciplinary Enforcement. And I would  
4 like for the -- to at least suggest to the court, that it  
5 look to some of the procedures and the rules for lawyer  
6 disciplinary enforcement, to make sure that first and  
7 foremost, public's protected; but also that there be some  
8 sort of due process when -- for instance, when a lawyer is  
9 placed on interim suspension, I understand that. But at  
10 times that can be very -- that can be detrimental to a  
11 lawyer's practice, especially when the lawyer ultimately  
12 just receives either a private admonition, or the case is  
13 dismissed. So -- and these are from my experience,  
14 representing lawyers over there.

15 So those are some of the things that I would look  
16 to the future of the court.

17 **Q. You have briefly addressed this in a previous**  
18 **question, but to what extent do you believe that a judge**  
19 **should or should not defer the actions of the General**  
20 **Assembly?**

21 A. Well, I think that, as I've said earlier, a judge  
22 is a judge and the General Assembly expresses the will of  
23 the people. And that's a -- the public policy is reflected  
24 in the legislation that's ultimately signed by the  
25 governor. I've testified in this room and in other rooms

1 before, so I have seen -- I've talked about legislation.  
2 I've provided information to legislators about legislation,  
3 and kind of seen under the hood and seen the process as it  
4 goes forward.

5 I mean, it's a difficult process. And the final  
6 -- the final result of that process is the product of  
7 debate by people who answer to the voters on election day.  
8 And they come up with a whatever the statute is, after it  
9 may -- it may require a conference committee, and that's  
10 the will of the people. And if that's not the will of the  
11 people, the people can vote for other people, if they want.

12 But it's not for the court to say what the public  
13 policy is. It's for the court to try to figure out what  
14 the legislators are saying whenever they pass legislation.  
15 So I -- so I guess my answer to you is, that I'd give it a  
16 lot of deference to what the Legislature says in a statute,  
17 and doesn't say in a statute.

18 **Q. The Commission receives 601 ballot box surveys**  
19 **regarding you, with 163 additional comments. The ballot**  
20 **box survey, for example, contained the following positive**  
21 **comments:**

22 **"Although not the usual candidate for an**  
23 **appellate court, he is uniquely qualified for the appellate**  
24 **level. An exceptional candidate. An exemplary member of**  
25 **the bar. Great temperament and demeanor. He would be a**

1       **tremendous asset to the court."**

2               **Eight of the written comments expressed concerns.**  
3       **Two respondents expressed concern that they do not believe**  
4       **that you could be neutral in your assessment of cases. How**  
5       **would you address this issue?**

6               A.     That's probably because of my perception as a  
7       plaintiff's lawyer; I was a president of the trial lawyers  
8       here. My response to that is, that I have represented both  
9       sides in various cases. Interestingly, I was --  
10      represented the defendant in a case called Smith v.  
11      Widener, that the Court of Appeals decided. And I still  
12      get grief from my friends in the plaintiff's Bar about that  
13      case. But it is correct.

14              And so I -- I really don't look at an issue and  
15      say, "How can I help one side or the other?" I look at an  
16      issue and try to figure out what is the law, and what is  
17      the legislature telling me that the law ought to be?

18              For instance, in the Smith case, it had to do  
19      with offsets against a verdict and how the plaintiff's  
20      lawyer there basically tried, in my opinion, to, in a very  
21      creative manner, obtain a double recovery. And I just  
22      didn't think that was right. So I did help the defense  
23      lawyer there. And I've represented Sea Pines in a very  
24      contentious defamation case, that we actually resolved  
25      while it was pending on appeal.

1           The only answer I can give you is that my  
2 obligation as an advocate is to advocate on behalf of a  
3 particular client, a position that I believe that, that  
4 client -- will get that client justice. As a judge, my job  
5 is to try to figure out what the law is, and apply the law  
6 even-handedly as the parties present the case to me.

7           **Q. Another two respondents expressed concern with**  
8 **your lack of experience on the bench. What response would**  
9 **you offer to this concern?**

10          A. Well, and I understand that concern. But there  
11 are -- first off, I'm not sure that being a trial judge, or  
12 some other -- having some other experience on the bench is  
13 required, or maybe even desired, for the position as an  
14 appellate judge. I think it's a different skill set. And  
15 the only thing I can think as an example is, for instance,  
16 in a baseball game when an umpire makes a "safe" or "out"  
17 call at first base; a judge has -- a trial judge has to  
18 make the ruling immediately. I mean, the lawyers need  
19 that. The parties need that. The jury expects that. The  
20 litigants expect that. And so that judge makes the call  
21 and you move on. An umpire makes the call.

22          Now, it's a little bit different because you  
23 don't stop a trial and get a -- you know, review right  
24 then. But I perceive that an appellate judge is more like  
25 the third person in the booth, who says, "Okay. Now, bring

1 me your complaint. And is there enough evidence to  
2 overturn what the trial umpire did?"

3 And if there's not, the call stands. Or maybe  
4 it's confirmed. But I think that is an entirely different  
5 skill set. The work that I have done in the appellate  
6 courts over the last 20 years -- really, the last 30 years.  
7 And when I count ten years as a court -- a staff attorney,  
8 I think has uniquely qualified me for this position.

9 **Q. You indicated in your PDQ that, in 2002 you were**  
10 **sued as the personal representative of an estate. Can you**  
11 **explain the nature and disposition of the case?**

12 A. Thank you. And it's interesting, because I'd  
13 forgotten about that lawsuit. Occasionally, a colleague  
14 will call and say, "I've got a lawsuit. The defendant is  
15 deceased, and the family refuses to open an estate."

16 For whatever reason, they don't want to, or they  
17 don't want to the -- whatever. So I stood in as the  
18 personal representative of the decedent's estate there, so  
19 that the plaintiff's lawyer could get the lawsuit filed and  
20 served within the statute of limitations, and then turn it  
21 over -- get it -- have the adjuster turn it over to a  
22 lawyer.

23 And it ended up being Ron Alexander, a good  
24 friend of mine who's no longer with us, unfortunately. And  
25 Ron called me up, and I said, "Yeah, Ron, you know, Greg

1 Sloan called me and asked me to do this. I agreed to do  
2 this."

3 So I was basically a straw person, a personal  
4 representative in a -- in a personal injury case. And they  
5 ended up getting the case settled. And that was the extent  
6 of my obligation in that lawsuit.

7 **Q. You also indicated in your PDQ, that in 2015 you**  
8 **were named as a defendant in a civil rights action filed**  
9 **pro se. Can you explain the nature of this case and**  
10 **disposition?**

11 A. Well, I discovered that case when I was doing the  
12 -- I did research on myself in preparing the PDQ. And I  
13 was unaware of the case, because in district court you  
14 don't issue -- a clerk has to issue the subpoena. and the  
15 clerk never issued the subpoena. It was -- it was referred  
16 to a magistrate judge, Judge Gossett, and she recommended  
17 immediate dismissal since I'm not a state actor yet.

18 And so she -- Judge Joe Anderson agreed with that  
19 disposition, and in September, the 4th Circuit upon that.  
20 So that case -- I wasn't even aware of that case, because  
21 it was never served upon me. And since it's a civil rights  
22 action, I had to be a state actor. And I was not a state  
23 actor.

24 **Q. Thank you, Mr. Nichols. Since submitting your**  
25 **letter of intent, have you sought or received a pledge of**

1 any legislator, either prior to this date or pending the  
2 outcome of your screening?

3 A. I have not.

4 Q. Have you asked any third parties to contact  
5 members of the General Assembly on your behalf, or are you  
6 aware of anyone attempting to intervene in the process on  
7 your behalf?

8 A. I have not con -- asked anyone else to contact  
9 me. And I'm unaware of anyone else interfering or  
10 intervening in the process.

11 Q. Since submitting your letter of intent to run for  
12 this seat, have you contacted any members of the Commission  
13 about your candidacy?

14 A. I have not.

15 Q. Do you understand that you are prohibited from  
16 seeking a pledge or a commitment, directly or indirectly,  
17 until 48 hours after the formal release of the Commission's  
18 report, and are you aware of the penalties for violating  
19 the pledging rules?

20 A. Yes, sir. I am very much aware of the 48-hour  
21 rule.

22 MR. GENTRY: I would note that the Midland's  
23 Citizens Committee found Mr. Nichols to be well qualified  
24 in the evaluative criteria of ethical fitness, professional  
25 and academic ability, character, reputation, experience,

1 and judicial temperament, and qualified in the remaining  
2 evaluative criteria of constitutional qualifications,  
3 physical health and mental stability.

4 The committee commented: "Mr. Nichols has  
5 exceptional experience in appellate practice, but he also  
6 has extensive experience in trial courts, which aids an  
7 appeals court judge. He is well known for his integrity  
8 and his intellect. His demeanor is excellent."

9 I would just note for the record that any  
10 concerns raised during the investigation regarding the  
11 candidate were incorporated in the questioning today.

12 Mr. Chairman, I have no further questions.

13 SENATOR CAMPSSEN: Thank you. Any questions  
14 from members of the Committee?

15 SENATOR HEMBREE: Yes, Mr. Chairman.

16 SENATOR CAMPSSEN: Senator Hembree.

17 SENATOR HEMBREE: Thank you, Mr. Chairman.

18 EXAMINATION BY SENATOR HEMBREE:

19 Q. Good morning, Mr. Nichols.

20 A. Good morning, Senator.

21 Q. A couple of quick questions. You mentioned in  
22 your -- and I gleaned some -- I think some of the answer to  
23 this question, but -- through some of your other responses.  
24 But you indicated that one of the reasons you wished to  
25 serve on the Supreme Court was that you had what it takes

1 to do the job right. And I would like you to elaborate a  
2 little bit, how you define doing the job right. What  
3 elements do you feel are most important there?

4 A. I think that the -- and I said this in my PD --  
5 sworn statement, or my PDQ, and I really, really feel this  
6 way: The litigants and the lawyers expect the judge to be  
7 as prepared -- as almost as prepared as the lawyers. Now,  
8 that's almost -- that's almost impossible, because the  
9 lawyer -- if it's the same lawyer who tried the case, that  
10 lawyer has lived with the case for a lot -- much longer  
11 than the judge.

12 But I think that it is incumbent upon anyone  
13 looking for this job, to be willing to read the records and  
14 briefs in every single case that comes before the court, to  
15 be able to listen not only to both sides of the debate, but  
16 to the other -- there are five members of the other four  
17 points of view that will -- that will come, and to take  
18 counsel from -- from not only the law clerks or the staff  
19 attorney, but from those other members of the court.

20 It is a -- it is not an easy job that I'm asking  
21 this -- this body to recommend me for. And I know that,  
22 having worked over there, and having seen how cases come  
23 through and how cases end up on their doorstep. I think  
24 that if you're committed to doing this job right, it's --  
25 it's a -- it's a difficult job. And I've never shied away

1 from hard work.

2 Q. What would you say, just looking -- and you kind  
3 of touched on this in your -- any kind of division the  
4 courts and things that you see sort of down the road, what  
5 would you say are the most pressing challenges facing the  
6 judiciary at this point in history?

7 A. Expediting cases, frankly, getting cases through  
8 the system. Now, the court has issued a few administrative  
9 orders to try to help that process; for instance, in the  
10 cert process for any Court of Appeals court -- in 2014, the  
11 court issued an administrative order that says you can't  
12 get more than twenty total days of extensions. And you can  
13 get them in five day snippets. And they remind you of  
14 that.

15 And I -- I praise that. Because there's just no  
16 reason to delay getting the case to them. For instance, in  
17 termination of parental rights or adoption cases, they  
18 issued an administrative order that expedites those. And I  
19 actually handled one that went from briefing and decision  
20 in the Court of Appeals to briefing and decision in the  
21 Supreme Court within six months. I actually lost the case,  
22 but I'm proud of the work that we did in that case, because  
23 we were able to pay homage to the court's attempt to make  
24 sure that these things get settled.

25 People are entitled to have their case settled,

1 and settled in an expeditious manner. I would like to see  
2 the court do better, frankly.

3 **Q. And some of that would be by rule. But some of**  
4 **that, at least in my experience, is the case it heard and**  
5 **then it seems to take an excruciatingly long time to get an**  
6 **order, or an -- or an opinion. Do you have any suggestions**  
7 **on how to remedy that problem?**

8 A. Well, and one thing is that the court can try to  
9 push itself internally with internal procedures. I'm a  
10 little reluctant to bring this up, but there's actually a  
11 statute in Title 14 that requires the Supreme Court to file  
12 it's opinion within 60 days of the end of the term. I'm  
13 not aware that the court enforce -- and they maybe,  
14 ultimately, have -- if someone tried to push that statute,  
15 they may find that, that might be a separation of powers'  
16 problem. But -- but having -- you know, I was reluctant to  
17 bring it up, but I did bring it up.

18 **Q. But my mind is racing --**

19 A. I hear you, Senator.

20 **Q. You go ahead. Keep going. You're doing fine.**

21 A. Your mind -- your mind has raced since we were in  
22 law school.

23 **Q. One way or another.**

24 A. But getting back to this, I do think that -- I  
25 don't know that there can be any artificial deadlines.

1 Courts have to be able to use the time that it requires to  
2 deliberate on these matters. And there are differing  
3 opinions up there, and what you want to try to do -- when I  
4 clerked with Judge Bell, Judge Bell hated dissents. He  
5 tried everything he could -- and I don't think you'll find  
6 that Judge Bell ever dissented in a -- in a decision. He  
7 may have concurred separately, or concurred in result. He  
8 thought that dissent at times reflected a failure of the  
9 process. I disagree with that -- I don't necessarily agree  
10 with that, because sometimes these -- the dissent, as we  
11 saw in -- you know, Judge Waring, Waties Waring, the  
12 dissent sometimes rules the day, and ought to.

13 But I think that the court should strive to be --  
14 and I know that they are. You know, they -- the Chief  
15 Justice looks at the numbers. He looks at the numbers.  
16 I'm very well aware of that. But having had the experience  
17 of arguing cases, in December of one year, and still -- and  
18 waiting, you know, a year or so, is hard on my clients.  
19 And that's what I think that the court just needs to keep -  
20 - keep in mind, that they're -- you know, they're real  
21 people behind these cases.

22 I'm not really answering your question very well.  
23 But I do think that the court ought to -- ought to look at  
24 ways to address the problem of delay in getting these cases  
25 decided.

1           Q.    What about do you have any recommendations for  
2 members of the general -- for the General Assembly, any  
3 glaring problems, you know, things that need a solution  
4 that you've got -- you know, like, Why don't you guys fix  
5 this thing? I'm sure there could be many. But anything  
6 kind of in this -- particularly, as it relates to the  
7 judicial branch?

8           A.    Well, you always want more judges and more -- you  
9 know, to deal with the burgeoning court time, you want to  
10 have the facilities that can accommodate the people. And  
11 so we've been building some beautiful courthouses around  
12 the state. I saw an article the other day. about how old  
13 the Richland County courthouse was. And that surprised me.  
14 For some reason, I didn't think about that. But so you  
15 want to make sure that you provide appropriate facilities  
16 and staff to get -- because I mean, South Carolina's  
17 population is still increasing. And necessarily, that  
18 means more people are encountering the court system, in one  
19 way or the other.

20                   And that can be a good thing, you know, for  
21 instance, in an adoption. Or it can be a difficult thing  
22 in a car wreck or a -- some other kind of lawsuit that  
23 comes up, people with businesses that -- that get into a  
24 dispute. With the change several years ago, in taking some  
25 of the administrative law court or Worker's Compensation

1 stuff directly to the appellate courts, that's taken a  
2 burden off of the circuit court.

3 But that has put that burden right in the seat of  
4 the Court of Appeals and -- well, in a lot of cases, and  
5 the Supreme Court. So I would like to see the Legislature  
6 make sure that they at least hear the Chief Justice out,  
7 about what he may perceive as necessary for equipment,  
8 facilities, and staff to try to get this done.

9 As far as the jurisdiction of the court, I think  
10 the jurisdiction's appropriate at this time. I don't  
11 believe that the Supreme Court needs any different  
12 jurisdiction than it has. And that's by statute and rule.  
13 I do think that the Supreme Court may need to assess how  
14 often it grants review in the Court of Appeals. But I  
15 certainly understand -- I mean, I certainly have been one  
16 of the -- their main customers, asking them to review those  
17 cases.

18 **Q. Thank you. The last thing is you -- there are**  
19 **many qualities that have been -- have been presented to us,**  
20 **that would -- that are make you unique to serve in this**  
21 **position, or qualified to serve in this position. Are**  
22 **there any weaknesses that you would say, "This would be my**  
23 **-- the only thing I'm not so good at, or I need to improve**  
24 **on in this capacity"?**

25 A. Well -- and nobody's perfect. And I understand

1 that. And there are times whenever I -- my Irish blood  
2 might -- might take over, and I get clouded by an emotion.  
3 But then, you know, I try to sit back. My dad always told  
4 me -- he told me to keep smiling. That's -- that was his  
5 motto. And I try to approach life that way.

6 But I could be -- I could be better organized.  
7 But I have Erin at my office, and Michelle at my home, to  
8 at least help me keep from getting too deep in the -- in  
9 the ditch. And they keep me on the -- on the road.

10 It is an unusual thing, I haven't worked as a law  
11 clerk, but I've never -- and I've managed staff attorneys  
12 as a chief staff attorney, but I've never worked where I  
13 worked directly with law clerks, giving them direction and  
14 giving them feedback. So that's going to be a learning  
15 curve for me.

16 **Q. I appreciate your responses and thank you for**  
17 **offering.**

18 A. Thank you, Senator.

19 SENATOR CAMPSER: Mr. Hitchcock?

20 MR. HITCHCOCK: Thank you, Mr. Chairman.

21 EXAMINATION BY MR. HITCHCOCK:

22 **Q. Good morning, Mr. Nichols. How are you?**

23 A. I'm fine, Mr. Hitchcock. Good to see you.

24 **Q. I think you've touched on this a little bit.**

25 **And, you know, I think it's incumbent upon us to -- you**

1 know, to express, you know, concerns that we may have in  
2 regards to individual candidates' candidacy. And the --  
3 you know, to be frank and honest with you, the one thing  
4 that I'm struggling with -- and it's not just you, it's --  
5 it is the concept of you never having served in a judicial  
6 --

7 A. Right.

8 Q. -- capacity before. You know, certainly, I know  
9 you. We know each other.

10 A. Right.

11 Q. I think I've maybe been involved in one of those  
12 60 cases together that you've been in, in the Supreme  
13 Court.

14 A. We have.

15 Q. You know, and I appreciate the -- your analogy of  
16 the -- you know, the umpire -- you know, the umpire calls  
17 balls and strikes. And the -- you know, the people up in  
18 the booth, you know, have an opportunity to review those,  
19 in making that analogy between the trial court and the  
20 appellate court. But the one thing that kind of struck me,  
21 in thinking about that analogy, is that I think that the  
22 people in the booth have been umpires before, in most  
23 instances, or referees, depending on whatever the sport is.

24 And I think what we're talking about here is  
25 taking somebody who's a player -- and I would, you know,

1 submit an All Star -- and putting them in the booth to  
2 review those calls that are made at the trial level. So if  
3 you can help me a little bit, and give me a little bit more  
4 insight into it, and what experiences that you've had.

5 And it doesn't necessarily have to be  
6 professional, but what experiences you have that you --  
7 that you feel like can -- where you've either gotten that  
8 experience, having to make that call, or that you feel that  
9 kind of uniquely places you in the -- in the position to be  
10 able to step into that role without having that experience.

11 A. Right. And let me also say I've been -- I've  
12 acted as a mediator in a number of matters; although, I'm  
13 not a certified mediator. I've had lawyers call me on kind  
14 of the -- the sort of the weird stuff, where law firms are  
15 breaking up and there's a dispute, and they've asked me to  
16 help mediate that. And I realize that's different from  
17 being a judge. But that at least has given me the  
18 opportunity to negotiate as a -- as a neutral with parties.

19 Judge Lee appointed me as a special referee. I  
20 was really looking forward to that opportunity, but the  
21 plaintiff didn't -- wouldn't cooperate with the defendant,  
22 and I dismissed the case for failure to prosecute. So that  
23 was my one shot at being a special referee.

24 I did work as an administrative judge, in a  
25 matter involving the Commission for the Blind; Lewis Cromer

1 against Sheheen Bethai. And those are not two -- those are  
2 two very well-prepared lawyers. And I rendered a decision  
3 that was an appeal.

4 I understand the concern. I would just give some  
5 examples: When the first Court of Appeals came along, Alex  
6 Sanders was the chief judge; he'd never been a circuit  
7 judge. I realize he'd been in the legislature, but he was  
8 never a circuit judge. Jack Gardner was the second senior-  
9 most judge; never been a circuit judge. Bert Goolsby had  
10 been in the attorney general's office; never been a judge.

11 And I realize this is the Court of Appeals, as  
12 opposed to the Supreme Court, but I still think it's the  
13 same process. And Judge Bell had been a law professor.  
14 Chief Justice Toal, although she had been in the General  
15 Assembly, had never been a trial judge. Although, she's  
16 getting a lot of experience for that now. And I'll be  
17 actually appearing in front of her in a few weeks.

18 So there are examples of folks who have gone from  
19 practice to the appellate courts, and one example to the  
20 Supreme Court in recent history. I didn't go back to  
21 research -- I have Professor Edgar's book and Professor  
22 Underwood's treatise, but I didn't go back in history to  
23 see if there are any other examples of practitioners who  
24 went straight to the bench.

25 But it certainly has happened at the U.S. Supreme

1 Court and the Federal Appellate Courts. But that's really  
2 the best answer I can give you, is that there are recent  
3 examples of it in South Carolina. And I do have some  
4 judicial -- some field umpiring experience, even though  
5 it's very limited.

6 SENATOR CAMPSSEN: Thank you. Anyone -- any  
7 other questions?

8 (Hearing none.)

9 EXAMINATION BY SENATOR CAMPSSEN:

10 Q. Judge, I want to ask you a few -- or not Judge,  
11 sorry. Wanna Judge.

12 A. Thank you, Senator.

13 Q. Mr. Nichols, I'm going to ask you a few questions  
14 that I basically ask all -- all the candidates. The first  
15 is: Do you believe that the Supreme Court has the power to  
16 order remedial legislative action to satisfy a case or  
17 controversy brought against the State of South Carolina?

18 A. Thank you, Senator. And I do not think it's  
19 appropriate for the Supreme Court to order legislative --  
20 if we're -- I'm reading your question correctly, I don't  
21 think it's appropriate for the Supreme Court to order the  
22 legislature to -- to do with anything with regard to  
23 setting policy or fixing a statute that it perceives as  
24 broken, or doing whatever. I don't know if that's what  
25 you're asking, but --

1           **Q.    What if it's a constitutional obligation?**

2           A.    Well, if there is a statute that the Supreme  
3 Court decides violates either the state or federal  
4 Constitution, its job is to just declare that, to render  
5 that judgement, and say, "This one fails."

6                   And it's up to you -- and they may invite the  
7 General Assembly to revisit the issue and try to fix it.  
8 But for instance -- say, for example, Jessica's Law, which  
9 this body enacted several years ago, the U.S. Supreme Court  
10 in Coker v. Georgia said that any legislation that offers  
11 the death penalty in a non-murder situation would violate  
12 the Eighth Amendment. But despite that, the Legislature  
13 enacted legislation which would give the death penalty to a  
14 defendant in a non-murder situation.

15                   That statute could come up. It wouldn't be  
16 appropriate for the general -- for the Supreme Court to  
17 then just say, "Okay, well, we're going to amend the  
18 statute to say in these circumstances only when there's a  
19 murder."

20                   That would not be appropriate. It would be  
21 appropriate for the court to say, "That statute's  
22 unconstitutional. General Assembly, you may readdress the  
23 situation and see if you can fix it. But it's not up to us  
24 to do that." You've got to stay in your lane.

25           **Q.    Do you believe -- do you believe that the duty of**

1 **the Supreme Court is to interpret the words of the**  
2 **Constitution, only according to the meaning they had when**  
3 **the Constitution was adopted?**

4 A. I think that what the Supreme Court should do is  
5 try to look at context at times. Sometimes you can do  
6 that. Sometimes there's -- there's very little legislative  
7 history around the state Constitution. There is some. And  
8 I think it's useful, certainly --

9 Q. Well, I'm not talking about intent. I'm talking  
10 about the meaning of the words when the Constitution --  
11 when those words were adopted.

12 A. Well, I think that the court ought to look at the  
13 words themselves, and try to figure out what the General  
14 Assembly was saying at the time, whatever provision was  
15 adopted; whether that would have been the Constitution  
16 early '70s, or the Constitution back in the 1800s. I'm not  
17 sure if I'm tracking, but I do think it's important to try  
18 to figure the context.

19 But, you know, you got to look at that in the  
20 context of the case that's right in front of you. You  
21 can't make broad pronouncements outside of the case and  
22 controversy that's right there in your lap. So if someone  
23 brings a case to you, and they say, "Under my particular  
24 facts, this statute violates this constitutional  
25 provision," now I've got to figure out what does that

1 constitutional provision mean. What did it mean when it  
2 was enacted. But what does it mean vis-a-vis the statute,  
3 and can I -- I mean, you should do this very reluctantly.

4 It's very important for the Appellate Court not  
5 to charge in and declare something unconstitutional. I  
6 don't know if I'm answering your question, Senator Campsen.  
7 But I think it's --

8 **Q. Well, there's no -- it's like a -- there's no**  
9 **right answer.**

10 A. No, I'm going to give you an answer that  
11 satisfies you. And whether you agree with it or not, I  
12 want to give you an answer that satisfies you for that.  
13 But I do think it's important to look at what was on the  
14 ground at the time that a provision was enacted. But I  
15 also think it's important to look at the case and  
16 controversy that's right in front of you, and how the  
17 parties had presented it and argued it.

18 I mean, an appellate court, it's -- my old boss,  
19 Judge Sanders, used to say, "The Appellate Court's like  
20 well-behaved children, you should speak only when spoken  
21 to."

22 And so I can't use somebody coming in and saying,  
23 "Well, the Constitution means this today, and use it in my  
24 case," and then I look at it and I had some view of the  
25 Constitution. That's not my job. My job is to decide the

1 case in front of me, based on the arguments the parties  
2 present. And then I have to look, first and foremost, to  
3 the statute that they're complaining about, and see,  
4 reluctantly, if it violates the Constitution.

5 And I don't know if I've answered your question,  
6 but that's the best answer I can give you today.

7 **Q. Thank you. What in your opinion -- as it relates**  
8 **to policy matters that are non-justiciable political**  
9 **questions?**

10 A. Well, non-justiciable political questions are  
11 things that are -- it involves the separation of powers.  
12 It involves this idea that the General Assembly is the body  
13 that is supposed to decide public policy. Because the  
14 General Assembly -- the members of the General Assembly are  
15 the people who are chosen by the voters, by the people who  
16 tell them, "We like what you think. We're voting you in.  
17 You do what we want you to do."

18 And that is a question that is outside the canon  
19 of the court. The court is supposed to say -- you know,  
20 the court can decide the constitutionality of the statute,  
21 but the court isn't supposed to rewrite statutes, or the  
22 court isn't supposed to try to declare policy and take  
23 actions that declare policy.

24 When the court does that, it engages -- it goes  
25 outside its lane. So those are non-justiciable issues.

1 And it's very important that judges remember their role.  
2 You know, the -- the judiciary is considered the weakest of  
3 the three branches of the co-equal branches. And it ought  
4 to be. The judiciary is supposed to decide matters that  
5 are presented to it, based on the particular facts of the  
6 case, and not to declare policy.

7 **Q. Do you think that there are any yet to be**  
8 **discovered, or yet to be articulated by a judge,**  
9 **constitutional rights in the state or the federal**  
10 **constitution?**

11 A. I don't think that the state or the federal  
12 constitution necessarily bestows rights upon us. I think  
13 what they try to do is they try to start with the premise  
14 that we have rights that are inalienable. And these -- for  
15 instance, the Bill of Rights talks in terms of the  
16 government shall not do X, the government shall not do X,  
17 the government shall not do X. These are restraints on the  
18 government. They're not grants of rights.

19 And the state constitution -- our state  
20 constitution is really interesting. I mean, it's -- it's  
21 had its bumps and bruises, but it's an amazing document.  
22 And we have a very similar -- very similar provisions that  
23 -- that protect rights, but don't necessarily -- they don't  
24 create rights, Senator.

25 And I don't know that you can go into each

1 provision, and look and see, well, I have some unknown  
2 right that now I'm going to try to -- try to push. What  
3 you may do, though, is say, "I think I have this  
4 inalienable right, and it's being infringed by the  
5 government. And this is my challenge that I'm going to  
6 take. And I'm going to use this constitutional provision  
7 as the vehicle with which to protect that right."

8 **Q. Thank you. Any other questions?**

9 SENATOR MALLOY: Yes.

10 SENATOR CAMPSER: Senator Malloy.

11 EXAMINATION BY SENATOR MALLOY:

12 **Q. Good morning, Mr. Nichols.**

13 A. Good morning, Senator. Good to see you.

14 **Q. So one of the things that we want to talk about**  
15 **is that the cost of judicial administration. When we were**  
16 **talking about backlog, and a lot of those things that we**  
17 **have with the court, one of the things I don't like seeing**  
18 **over here is our Supreme Court justices coming over to here**  
19 **to campaign for funds. And so I want to ask two questions**  
20 **-- I can go in order.**

21 Do you have an idea of how the costs of judicial  
22 -- the judicial can be reduced? And the other one is that,  
23 do you think that one method of funding the courts is just  
24 a percentage of the general appropriation's budget, as  
25 opposed to fees and fines?

1           A.    Right.  And fees and fines -- fees and fines are  
2 just -- those are non-recurring, and those depend on a  
3 number of things.  Although, we tend to have a number of  
4 citizens who pay into that trough.  But I agree with you,  
5 that the uncertainty of fees and fines can leave you with  
6 unfunded mandates, if you -- if you expand the -- expand  
7 any portion of the judiciary.

8                   But getting back, I have talked to the prior  
9 chief and to the current chief at times about that -- and I  
10 mean, it's a difficult issue.  On the one hand, we have a  
11 number of things that end up in the circuit court, for  
12 whatever reason and, you know, the court has to dispose of  
13 those, whether those be summary dispositions or a  
14 disposition by jury trial or non-jury trial.  And you've  
15 got to have the staff.  You've got to have the facilities.  
16 And that's -- that's just not an inexpensive proposition.

17                   But then we also have -- and I mean, the  
18 difficulty is we have some counties where we don't have  
19 terms of court.  And so folks kind of wait around, while we  
20 have other counties that are just overly burdened.  And  
21 perhaps there's a way to solve part of that problem -- you  
22 know, maybe letting the judges ride the circuit more.  And  
23 I realize maybe that's cost.

24                   But at the end of the day, you have -- if you  
25 have an empty court house sitting there, that's a cost as

1 well. So there are a number of things, I think, that you  
2 can look at. That's one of the things, to make sure that  
3 you use your resources as your guide in an appropriate  
4 manner.

5 Q. And one I got -- I'm going to read it, 'cause I  
6 have it written out here. Do you believe that the Supreme  
7 Court -- and you may have already answered it -- has the  
8 power to issue a writ of mandamus against the General  
9 Assembly, or any member of the General Assembly, in order  
10 to get the Legislature to perform or not perform a certain  
11 action?

12 A. A writ of mandamus is what's been known as the  
13 highest writ in the law. It is a pretty difficult thing to  
14 get. And what you're trying to say is that some executive  
15 body is engaging in behavior which is merely  
16 administrative; there's no discretion, they ought to be  
17 doing something that they're not doing. And they have no  
18 discretion not to do it.

19 I have trouble saying that the Supreme Court  
20 should issue a writ of mandamus at the General Assembly,  
21 because by its very nature there's discretion in almost  
22 everything you do. You know, I've -- I've seen how the  
23 sausage is made. I understand the difficulty of the  
24 debate. And I've seen how the lobby works. I've seen how  
25 committee rooms work.

1           So to basically take the language of a statute,  
2 and say, "Okay, this gives you a mandate. And you're not  
3 following it, so I'm going to issue a mandamus to make you  
4 follow the mandate," I think is a very dangerous -- I mean,  
5 that -- that essentially causes the court to become a  
6 legislator. And I hate to say "never." I can't imagine  
7 the situation where it would be appropriate for the court  
8 to do that.

9           **Q. I'll move just a little bit, and talk about**  
10 **adequate access to the courts of our citizens here in South**  
11 **Carolina.**

12           **Do you believe that all citizens of South**  
13 **Carolina have adequate access to the courts; and if so, do**  
14 **you have some ideas as to how we would help remedy that?**

15           A. I don't believe that everybody has adequate  
16 access. We have folks who are in poverty, who need, for  
17 instance, a divorce. And they don't necessarily have  
18 access to lawyers or to the court system, the same way that  
19 somebody has resources. And we got to find a solution for  
20 that. Because these folks are citizens, they're -- you  
21 know, they get up in the morning and they do their work and  
22 they pay their taxes, they do everything they're supposed  
23 to do. And they expect that the courts, which are there  
24 for them, are available to them.

25           As far as whether somebody is deprived of access

1 to the court because they want to bring some sort of crazy  
2 cause of action, I have no problem with saying, you know,  
3 "You got to go to your General Assembly and get the General  
4 Assembly to say that, that's something that gives you  
5 access."

6 You know, whether you -- whether to adopt some  
7 cause of action to something like that. Those are policy  
8 decisions that voters make in the voting box -- in the  
9 voting booth, to send people up here to debate bills and  
10 pass legislation.

11 But I do think that we need to make the resources  
12 available to folks who -- who are below the poverty level,  
13 or who have -- who don't have access to the kind of  
14 resources that others have.

15 **Q. And the next question is: Do you believe that the**  
16 **current system we have for disciplining lawyers and judges**  
17 **is effective? Why or why not?**

18 A. I think in some ways it is, and in some ways it  
19 isn't. The Rule 8.3 has -- it basically says that we have  
20 a mandate as lawyers, to report judges or lawyers if, you  
21 know, they commit some activity that reflects a substantial  
22 -- a substantial level of untrustworthiness, or otherwise  
23 unfitness or dishonesty, or otherwise unfitness as a  
24 lawyer.

25 And the comments say that "substantial" doesn't

1 mean amount, but it means gravity. And so we -- and the  
2 comments also go through and basically say that it gives us  
3 a lot of leeway. However, right now -- and this is  
4 disappointing to me, but right now a number of lawyers are  
5 using the disciplinary process in a manner that Rule 4.5  
6 says they shouldn't do. And it's -- it's irritating. It  
7 is costly. It is when somebody threatens or engages in a  
8 disciplinary matter in order to gain an advantage in a  
9 civil case.

10 And I would like to see the court say something  
11 definitive about how that -- that -- that rule is there. I  
12 mean, right now I am working on a few matters -- and I  
13 won't go into great detail -- but a few matters where in my  
14 perception that's what's being done. The difficulty is how  
15 do I report that while I'm working on this, and follow  
16 through with that? And so there is a little bit of a  
17 catch-22 there.

18 But I also represent lawyers over at ODC, and the  
19 system over there -- and I think the lawyers over there are  
20 wonderful. I have a great relationship with Ms. Coggiola  
21 and her lawyers. But there are times when there were --  
22 that process takes too long. It just takes too long. I'm  
23 working on one case right now, which is a -- it involves a  
24 member of the judiciary. And there's an interim suspension  
25 and there's -- there's an agreement. And it's just taking

1 too long.

2           What I'd like to do is I'd like to sit down with  
3 the court, and say, "We need to go over the rules for  
4 lawyer disciplinary enforcement and all the procedures  
5 there and get it to where it's manageable, and get it to  
6 where it considers safety of the public, but at the same  
7 time it considers due process for those people who find  
8 themselves a target of disciplinary matters."

9           **Q. And so some easy ones so we can get to know what**  
10 **do you think has been your greatest accomplishment in your**  
11 **legal career?**

12           A. So far it's -- I have had the pleasure of working  
13 on a lot of different things. I mean, it -- it's hard to  
14 imagine. I mean, I was a -- I was -- I got into a position  
15 where I could work with the Senate Ethics Committee last  
16 summer. I worked for a couple years with the House Ethics  
17 Committee and the speaker. Just the ability to take on  
18 different challenges and learn different things.

19           I've been on the Board of Law Examiners for 14  
20 years. We're getting ready to go to the UBE, the Uniform  
21 Bar Exam, which is a whole new horizon. That's been  
22 wonderful in its own way, in a different way.

23           But my greatest case achievement was in a case  
24 called The State v. Terry Tindall. And Mr. Tindall is  
25 right now in Atlanta, and he's got a car dealership. He's

1 doing very well. And I won't bore you with the facts, but  
2 he was under a sentence for a long period of time, and a  
3 big fine. And we were able to get him -- get his  
4 conviction reversed and him home. And every year, on the  
5 anniversary of that decision -- sorry -- he sends me  
6 flowers or a card. I hear from his son, who's now in the  
7 Air Force. I hear from his family.

8 I'll leave it at that. Thank you.

9 SENATOR CAMPSSEN: Any other questions? Mr.  
10 Safran.

11 EXAMINATION BY MR. SAFRAN:

12 Q. Good morning -- or I guess, now afternoon.

13 A. Good afternoon. And good to see you.

14 Q. Let me ask you this -- you've touched on this  
15 earlier: You spent ten years, basically, kind of sitting as  
16 the person that helps the judge correct the situation,  
17 correct?

18 A. Helps the judge get through the case.

19 Q. Okay.

20 A. How about that?

21 Q. But in a non-advocacy position.

22 A. That's correct.

23 Q. So you know the difference.

24 A. I do.

25 Q. And in fact, what you've done in the last twenty

1 years, you're ethically obliged to be an advocate?

2 A. Yes, sir.

3 Q. And you recognize that when you come into a  
4 position like this, advocacy has to be left behind.

5 A. Yes, sir.

6 Q. Now, you may feel strongly about positions, but I  
7 think you've told us, certainly, you recognize the law is  
8 openly what's going to be your -- your guide.

9 A. That's correct.

10 Q. And I guess, you know, from a standpoint of just  
11 looking at it now, during this time frame that you have  
12 been an advocate, you are able to take the step to say,  
13 "I'm not wearing that hat anymore."

14 A. I think I can. And I know I can. Again, having  
15 worked on that other -- on the other side of the bench --  
16 not as a judge, but certainly at the elbow of the judge. I  
17 understand the difference.

18 Q. Well, and do you even understand it -- I guess  
19 more so because you probably been on the downside end of  
20 cases where maybe that did occur.

21 A. I've been on the downside of a few cases. I've  
22 lost cases I thought I should win, and I've certainly won  
23 cases I probably should have lost.

24 Q. Let me switch gears with you. You also talked  
25 about the different skill set, and not in any way to

1 diminish what a circuit judge does, but in the day-to-day  
2 activities of a circuit judge, as you said, it's fast-  
3 paced, you're in trial. Even when you're a non-jury, you  
4 may have umpteen cases that you have to handle.

5 As a practical matter, do you see what an  
6 appellate judge does really is going to be more focused on  
7 the research, the writing, that generally a circuit judge  
8 is just not going to be able to do from a time standpoint?

9 A. I do. And I think -- and again, I've got good  
10 friends who are circuit judges. And I don't mean this in a  
11 pejorative way at all, it's just the nature of their job  
12 that they don't have the luxury, the ability to sometimes  
13 reflect. Now, sometimes they can ask lawyers to, "Hey,  
14 provide me a proposal or provide me a memo," and that --  
15 that's very helpful to them.

16 But as you said, they've got 25 cases on the  
17 roster, and they've got to figure -- you've got to figure  
18 out how you're going to parse your court time. And  
19 sometimes you just have to make the best call you can.

20 And, you know, it takes a lot of courage to be a  
21 trial judge. It really does. And I'm not saying I don't  
22 have that, but I don't know that I have the skill set to,  
23 you know, "Objection; overruled. Objection; sustained,"  
24 make the call, because I would be so worried am I getting  
25 it right, am I getting it right.

1           And I'm not saying that they don't care if they  
2 get it right. I'm just saying that they feel like you've  
3 got to move the case along. You do the best you can.  
4 Judge Ness used to say, "I may be wrong, but I'm never in  
5 doubt." And that is a unique skill that the trial judge  
6 has. I don't know that a -- I mean, I do know that an  
7 appellate judge can't take that attitude. You just can't  
8 take that attitude. You have to take the time to get it  
9 right.

10           **Q. And just the last thing: Because of, I guess, the**  
11 **length of time that you have practiced -- you obviously**  
12 **mentioned Judge Bell, Judge Goolsby. And you've seen**  
13 **plenty, both before and after. And I guess my question is,**  
14 **is that -- was there a lack of having judicial experience,**  
15 **anything that in retrospect you've ever questioned that**  
16 **they didn't do exactly what was necessary for an appellate**  
17 **judge standpoint? Whether you agree with them or not.**

18           A. Judge Goolsby was one of my best friends at the  
19 Court of Appeals. He -- and again, I clerked for Judge  
20 Sanders -- I clerked for Judge Littlejohn, who had been a  
21 circuit judge and a Supreme Court justice, and then I  
22 clerked for Judge Bell. And I saw the different way they  
23 approached the case, in some respects. But by and large,  
24 they all approached it the same way.

25           You approach it by how is it being presented to

1 us by the parties, then we see what is the law that applies  
2 here to these facts, and then how -- and -- and they  
3 understood that they were ruling for this case, but it  
4 could impact other cases. They did understand that.

5 I don't think anybody could question Judge Bell's  
6 bonafide as an appellate judge. And, you know, he had  
7 never been in the legislature, or been on the bench. And  
8 so but he had been in practice. And he understood, as I  
9 do, you know, the difficulty at times of getting cases to  
10 the court. He also understood the care that it took to  
11 make sure that you were looking at everything that's  
12 applicable, and then -- you know, get it right.

13 People deserve that. They really deserve that.

14 **Q. Thank you very much.**

15 A. Thank you, Mr. Safran.

16 SENATOR CAMPSSEN: Any other questions?

17 Senator Malloy.

18 RE-EXAMINATION BY SENATOR MALLOY:

19 **Q. Do you have any expertise other than law?**

20 A. You'll have to ask others about it, or ask my  
21 wife about that. I have taken up painting a few years ago.  
22 George W. Bush and I have now found we're artists. I play  
23 a little guitar, here and there. But I don't know if it's  
24 expertise.

25 I used to play baseball, but I was stretching too

1 many doubles into singles. So I had to give that up. And  
2 I like fly fishing, but I don't get out and -- to do that  
3 as much. But my wife and I do hike a good bit.

4 **Q. And with all the judges that you have mentioned,**  
5 **tell me who -- which judge would be a -- if you have one**  
6 **specific that's a mentor, that -- and any particular reason**  
7 **why you choose that particular judge. 'Cause you've named**  
8 **a lot of judges. I'm trying to --**

9 A. Right. I take a little piece from each. Now,  
10 Judge Sanders and I worked together, and we worked together  
11 on the trial handbook for years. And so -- and Judge  
12 Sanders offered me the first opportunity to come work for  
13 the courts. I was in practice with Rogers and Koon at the  
14 time, so I have a special affinity for Judge Sanders.

15 But Judge Littlejohn, I can't tell you how much I  
16 appreciate the eight months, or almost nine months, that I  
17 got to spend working with Bruce Littlejohn, and just -- I  
18 mean, he prosecuted war criminals in the Philippines. He  
19 was there, you know, as a trial judge. And then as a --  
20 you know, and then he -- he carried forth the things that  
21 Judge -- Justice Woodrow Lewis put in place, he carried  
22 forward; things like bridge the gap, and things that were  
23 trying -- he really cared about the profession. But he  
24 also cared about people.

25 I remember one time, though, I took a draft

1 opinion -- you know, he told me how he wanted the case  
2 decided and all that. And so I drafted him up an opinion  
3 and took it to him. And he -- he looked at me, and he  
4 said, "Why you got all that law in there?"

5 And so that was having clerk with Judge Bell.  
6 You know, Judge Bell wanted the "dooms of Canute" and --  
7 you know, all this kind of stuff in there. So it was just  
8 entirely different experiences from each.

9 But I thoroughly enjoyed my time with Justice  
10 Littlejohn. But also, I'd have to say I take a lot from  
11 Judge Sanders.

12 SENATOR CAMPSSEN: Thank you. Anyone else?

13 (Hearing none.)

14 SENATOR CAMPSSEN: Okay. Mr. Nichols, thank  
15 you. That concludes this portion of your screening  
16 process. As you know, the record will remain open until  
17 the formal release of the report of qualifications. And  
18 you may be called back at any such time, if the need  
19 arises.

20 MR. NICHOLS: Thank you. Thank you.

21 SENATOR CAMPSSEN: Thank you for your  
22 offering, and thank you for your service to South Carolina.

23 MR. NICHOLS: Thank you very much, Mr.  
24 Chairman, and members of the Commission. And I really  
25 appreciate what you do here today. And I want to thank you

1 very much for the opportunity.

2 SENATOR CAMPSEN: Yes, sir. Thank you.

3 (Off the record from 12:18 p.m. to 12:27 p.m.)

4 SENATOR CAMPSEN: Okay. I'm going to call  
5 the -- call the Commission back to order. Could we have  
6 all members.

7 Okay. Mr. Richardson, welcome.

8 MR. RICHARDSON: Thank you. Good morning.

9 SENATOR CAMPSEN: Please raise your right  
10 hand.

11 WHEREUPON:

12 MATTHEW T. RICHARDSON, being duly sworn and  
13 cautioned to speak the truth, the whole truth and nothing  
14 but the truth, testifies as follows:

15 SENATOR CAMPSEN: Have you had an  
16 opportunity to review your personal data questionnaire and  
17 sworn statement?

18 MR. RICHARDSON: Yes.

19 SENATOR CAMPSEN: Are they correct?

20 MR. RICHARDSON: Yes.

21 SENATOR CAMPSEN: Does anything need to be  
22 changed?

23 MR. RICHARDSON: No.

24 SENATOR CAMPSEN: Do you object to making  
25 these documents and amendments applicable as part of the

1 record of your sworn testimony?

2 MR. RICHARDSON: I do not object.

3 SENATOR CAMPSEN: That will be done at this  
4 point in the transcript.

5 (EXHIBIT NO. 1 - JUDICIAL MERIT SELECTION  
6 COMMISSION PERSONAL DATA QUESTIONNAIRE OF MATTHEW  
7 TERRY RICHARDSON)

8 (EXHIBIT NO. 2 - JUDICIAL MERIT SELECTION  
9 COMMISSION PERSONAL DATA QUESTIONNAIRE AMENDMENT  
10 OF MATTHEW TERRY RICHARDSON)

11 (EXHIBIT NO. 3 - JUDICIAL MERIT SELECTION  
12 COMMISSION SWORN STATEMENT OF MATTHEW TERRY  
13 RICHARDSON)

14 (EXHIBIT NO. 4 - JUDICIAL MERIT SELECTION  
15 COMMISSION SWORN STATEMENT AMENDMENT OF MATTHEW  
16 TERRY RICHARDSON)

17 SENATOR CAMPSEN: Mr. Richardson, the  
18 Judicial Merit Selection Commission has thoroughly  
19 investigated your qualifications for the bench. Our  
20 inquiry has focused on nine evaluative criteria. And it  
21 has included a ballot box survey, a thorough study of your  
22 application materials, a verification of your compliance  
23 with state ethics laws, a search of newspaper articles in  
24 which your name appears, a study of previous screenings,  
25 check for economic conflicts of interest. And we have

1 received no affidavits filed in opposition to your  
2 election. No witnesses are present to testify.

3 Do you have a brief opening statement you  
4 would like to make at this time?

5 MR. RICHARDSON: Mr. Chairman, I would just  
6 like to do two things: One, is to introduce the folks who  
7 are here with me today, if that's okay.

8 SENATOR CAMPSSEN: Yes, sir.

9 MR. RICHARDSON: I have with me my wife,  
10 Beth Richardson. She is a lawyer at Sowell Gray, and my  
11 college sweetheart and the mother of our three children,  
12 who are in school, but wanted to be here. We told them  
13 they had to wait on the transcript.

14 Also with me is my mother and father, Terry  
15 and Gail Richardson of Barnwell, and my uncle, Richard  
16 Ness, of Bamberg.

17 SENATOR CAMPSSEN: Okay. Welcome. Thank  
18 you. Please answer Counsel's questions.

19 MR. RICHARDSON: Thank you.

20 MR. DENNIS: Thank you, Mr. Chairman. I'd  
21 first like to note for the record, that based on the  
22 testimony contained in the candidate's PDQ, which has been  
23 included in the record, with the candidate's consent, Mr.  
24 Richardson meets the constitutional and/or statutory  
25 requirements for this position regarding age, residence,

1 and years of practice.

2 EXAMINATION BY MR. DENNIS:

3 **Q. And, Mr. Richardson, would you tell the**  
4 **Commission why you'd like to serve as a justice on the**  
5 **Supreme Court?**

6 A. Thank you. I've always wanted to serve on the  
7 Supreme Court of South Carolina. In fact, it's been a part  
8 of my life, since my grandfather was sworn into this very  
9 seat in 1974. I greatly respect the institution and its  
10 critical role in democracy.

11 I worked for Jim Harrison, in the House Judiciary  
12 Committee, and I ran for the constitutional office of  
13 Attorney General; And both of those are consistent with  
14 what my personal commitment is to public service and the  
15 rule of law.

16 But really, serving on the Supreme Court is my  
17 strongest desire, because that is the greatest public  
18 service in protecting the rule of law in South Carolina.  
19 And having been close to the Supreme Court my entire life,  
20 I wanted to -- I want to ensure its legacy and preserve its  
21 legitimacy.

22 Maybe most importantly, my grandfather showed me  
23 how to be tough and fair. And it's because he knows our  
24 calling, really, is to do justice and love mercy and walk  
25 humbly with God. And I will do that, if elected to the

1 Supreme Court, for all the people of South Carolina.

2 Q. Thank you, Mr. Richardson. Can you explain how  
3 you feel your legal and professional experience thus far  
4 will assist you at being an effective Supreme Court  
5 justice?

6 A. I have had broad experience at all levels, in all  
7 courts of South Carolina, state and federal. I've had a  
8 balanced practice for more than 15 years, bringing cases  
9 for the legal rights of the state victims, individuals and  
10 businesses. And about half of my practice has been  
11 defending those cases.

12 My experience has been with a very wide range of  
13 clients. I've represented the State of South Carolina  
14 agencies, municipalities, counties, small businesses,  
15 Fortune Fifty companies, and folks from all stations and  
16 socioeconomic status in South Carolina; advising some of  
17 the top businessmen and top-elected leaders, and also some  
18 of the poorest families in rural South Carolina.

19 My experience with -- as a lead attorney in some  
20 of South Carolina's most largest and most complex  
21 litigation, has been a big part of why my experience has me  
22 prepared for the Supreme Court. I've handled those  
23 successfully, and as part of the greater good for South  
24 Carolina. And I would just direct you in my list of  
25 significant litigations in the Kiawah case, as a case that

1 is the largest minority shareholder oppression case in the  
2 history of South Carolina, and one in which most people  
3 aren't familiar with me being the lead counsel in that  
4 case; and preserving that asset for the good of South  
5 Carolina, and for the people that live there and our  
6 industry -- tourist industry.

7 But having that experience, I believe  
8 demonstrates the right perspective and good judgement to  
9 serve on the Supreme Court. I've also been the victim of  
10 violent crime. I had to testify and face the criminal who  
11 pointed a double-barreled shotgun in my face. And even  
12 though that was 20 years ago, every time I walk outside in  
13 the dark at night, my head's on a swivel.

14 I've already served in apex positions of  
15 leadership in three organizations that have served over a  
16 thousand attorneys and judges in our state. And as part of  
17 that process, I had to collaborate at a very high level of  
18 intellectual demand, and more importantly, using a  
19 deliberative process to come up with collective decisions  
20 for the greater good.

21 I think that what we should want are -- for the  
22 Supreme Court, are our very best attorneys. And not just  
23 those that are the most experienced. In fact, some of the  
24 nation's greatest Supreme Court justices never served on a  
25 trial court, and did not make their entire practice in the

1 appellate courts.

2           For example, Chief Justice William Rehnquist, who  
3 my brother was fortunate to serve as a law clerk, was  
4 elevated and made a U.S. Supreme Court justice at the age  
5 of 47, having never been a judge before. And it's happened  
6 here in South Carolina too.

7           So any deliberative body can benefit from members  
8 with different experiences. And I believe I have a strong  
9 and balanced experience to compliment the other justices in  
10 the deliberative decision-making by our Supreme Court.

11           **Q. How would you describe your general judicial**  
12 **philosophy?**

13           A. I described it, obviously, in our submissions  
14 already. But just to lay it out for you-all, it's  
15 essentially four elements: A justice, I think, has to be --  
16 or should be established through a conservative judicial  
17 philosophy. We know that Hamilton, in the Federalist  
18 papers, said that this is the weakest branch, and that it  
19 only hears cases and controversies, and it only pronounces  
20 legal judgement.

21           But that has to be done, first, through the  
22 strict construction of the law as written, the language  
23 that binds us in our Constitution, and in our statutes.  
24 And it's important that we decide in the courts only those  
25 issues that are brought to us, and decide them only as far

1 as needed. Particularly in a constitutional context where  
2 we have to be reluctant at reaching constitutional  
3 questions; where we have to make every presumption in favor  
4 of its constitutionality; where we have to ensure that if  
5 you are going to overturn a statute that it must be done  
6 only if it's clearly violates the Constitution; and then by  
7 -- beyond a reasonable doubt.

8           And in addition to staying within the legal  
9 issues presented, I think it's very important that we write  
10 clearly and concisely. And not just for the lawyers and  
11 those trained in the law, but for those that have to comply  
12 with the law, that have to plan in their business or comply  
13 in their communities. And I think that, that is an  
14 important point, not just to understand the law but also  
15 the reasons for the decisions.

16           And last, I would say that activism has no place  
17 in judging. Because we all need and we all benefit from  
18 the stability and the certainty of established law; and  
19 that we all know, certainly in this room, that changes to  
20 the Constitution, and changes to the statutes, can be done  
21 through the elected officials in the other two branches in  
22 the democratic process. And so that's my judicial  
23 philosophy.

24           **Q. Mr. Richardson, would you describe your vision**  
25 **for the future of the state's judicial system, and what**

1 **changes, if any, you might advocate for? And why, please?**

2 A. Sure. As I said at the beginning, part of my  
3 motivation of wanting to be on the court is to preserve its  
4 legacy and its legitimacy. And I think that recognizing  
5 and being faithful to its proper role is a critical part of  
6 that.

7 We also have responsibility at the Supreme Court  
8 for the administration of justice and the unified court  
9 system. And I think there needs to be leadership from the  
10 top, as with most things. And part of that involves  
11 handling the docket in an expeditious way. We notice the  
12 Constitution requires a speedy remedy. We know there are -  
13 - there's a need for certainty and -- and answers to the  
14 litigants, so that they get quick and -- and the correct  
15 answers.

16 But it's very hard to look down to the -- to the  
17 front lines, to the trial courts, and to say that they need  
18 to handle the dockets more efficiently and more  
19 effectively, if the Supreme Court itself isn't handling and  
20 deciding its cases expeditiously.

21 But I found that the Supreme Court, through its  
22 docketing committees and task force, is taking a hard look  
23 at that issue, and using the folks who are involved in the  
24 -- on the -- on the front lines, and what issues that they  
25 need to -- they need to address. And I think that's

1 something that needs to be continued and used -- and used  
2 to improve the court system, top to bottom.

3 But as part of that, we've found in the criminal  
4 context, general sessions court, and in the family courts,  
5 that what you measure and what you require reporting on has  
6 a great effect on the outcomes in those courts. And so  
7 from my perspective, having dealt with some of these issues  
8 and access to justice, and in seeing the effectiveness of  
9 organizations, and trying to help address problems that we  
10 have, not just in a court system but in any system, that  
11 it's very important that we look for ways to use a  
12 measurement and use reporting in order to have people focus  
13 on what kind of outcomes we want.

14 And so leading by example and measuring and  
15 reporting outcomes, I think are the most important things  
16 that we need to do to improve the court system.

17 **Q. Mr. Richardson, to what extent do you believe**  
18 **that a judge should or should not defer to the actions of**  
19 **the General Assembly?**

20 A. Well, certainly, there's deference in statutes,  
21 as I just explained, with reviewing the constitutionality  
22 of statutes. There's a reluctance to reach constitutional  
23 questions. There's a presumption that they're valid.  
24 There's a effort to interpret them in a way that is  
25 constitutional, and then only if it is -- clearly violates

1 a -- the Constitution, and beyond a reasonable doubt should  
2 a statute be overturned.

3           But it -- but it raises the broader question,  
4 that I'm sure we'll get into, of a separation of powers.  
5 And I think that the political question doctrine kind of  
6 illustrates this best: This body, for example, is  
7 established and created by a constitutional authority to  
8 the General Assembly, to judge the qualifications of  
9 judicial candidates. And that is not a justiciable  
10 question. We can't challenge that in court to try and  
11 affect or change the outcome or decisions made by this  
12 body.

13           It's true in many other contexts, claims against  
14 the state, again given to the General Assembly, to  
15 establish and adjust which claims may be made against the  
16 state. Now, if a claim is made, then it's a justiciable  
17 legal question as to -- in those -- the facts of that case,  
18 whether the claim is proper or not.

19           But there's a clear line between what is the  
20 proper role of the courts and what is the General  
21 Assembly's role in the Constitution. And one last example  
22 is -- is payments out of the Treasury. We know that,  
23 clearly, for a legislative prerogative is appropriations,  
24 so the amount of appropriations, and -- and to what, is --  
25 is not a justiciable question. That's a -- that's a

1 political question that's not justiciable.

2           However, whether a payment out of a treasure --  
3 out of the Treasury, at a state or local level, was done in  
4 accordance with an appropriation, a proper -- a proper  
5 appropriation, that is a justiciable question. And when  
6 the treasurer is writing checks that weren't appropriated,  
7 that's something that would need to be reigned in.

8           So even though we know that the courts are the  
9 weakest branch, they have the highest responsibility at  
10 preserving the separation of powers; mainly, because they  
11 have to judge their own potential encroachment into those  
12 areas.

13           **Q. Thank you. The Commission received 469 ballot**  
14 **box surveys regarding you, with 85 of those containing**  
15 **additional comments. The ballot box survey, for example,**  
16 **contained the following positive comments concerning you:**

17           **"An amazing mind. Exceptionally well qualified**  
18 **in all categories. And I am awed by his knowledge and ease**  
19 **of explanation."**

20           **Of those 85 additional comments, 15 did raise**  
21 **some level of concern. The concerns seemed to center**  
22 **primarily on whether or not you had appropriate appellate**  
23 **experience. Can you respond to those concerns for**  
24 **Commission, please?**

25           **A. Certainly. And addressed what I think is**

1 important about experience for the Supreme Court, already.  
2 I have had appellate experience. I think I fall well  
3 within the range of those who have been, and are currently  
4 serving on the court. I've got the same, if not more,  
5 practice experience than the chief -- the current Chief  
6 Justice, who had no appeals in his last screening.

7           The current Chief Judge of the Court of Appeals,  
8 I have as much, if not more, experience in private practice  
9 as he does. He had two appeals that he handled. And I  
10 think that we -- in a deliberative body like the Supreme  
11 Court, that we benefit from having folks who have been  
12 across the table from clients, who've had to explain not  
13 just how to comply, but how to interpret the decision and  
14 the reasoning that has been handed down.

15           And my involvement and my experience, in both the  
16 appellate courts, which I have had, and in dealing with  
17 clients, and in the -- and in almost every court in this  
18 state, and with a wide variety of issues and a wide variety  
19 of clients, that's the type of experience that we -- that  
20 you would want to have be part of the deliberative process,  
21 the collective decision-making.

22           For a group that already is well -- has the box  
23 checked of being on -- having been on the Court of Appeals,  
24 having been on the trial bench, and we -- I use a few  
25 examples, but there are numerous examples of very good

1 justices and contributors on the appellate bench, that have  
2 not necessarily made their career their focus on the  
3 appellate courts, or has previously served as a judge at  
4 all.

5 And so I don't see that as necessarily as a bad  
6 thing. In fact, I think some diversity of experience is  
7 good in that collective decision-making process. And I  
8 certainly believe I've got as much experience, if not more  
9 than some who are currently serving.

10 **Q. As you know, your PDQ and sworn statement**  
11 **indicate some amount of partisan political activity in your**  
12 **past. Can you please offer to the Commission your thoughts**  
13 **on how, if at all, this impacts your qualification for**  
14 **judicial office.**

15 A. Certainly. The independence of the judiciary  
16 requires judges to be removed from political activity.  
17 Now, many -- in fact, at one point probably all of the  
18 judges had served in a partisan elected position in this --  
19 in the -- in the General Assembly. And I think that it's  
20 very important that you make that transition, and make the  
21 commitment to avoid all political activity when you become  
22 a judge.

23 I certainly think that I've already demonstrated  
24 my ability to do that in the screening process, and with  
25 the recommendations that I have in my application. But I

1 certainly pledge to avoid all political activity while I  
2 serve on the Supreme Court, or as a judge in this state.

3 Q. Thank you, Mr. Richardson. Just some  
4 housekeeping things to run through now. Since submitting  
5 your letter of intent, have you sought or received a pledge  
6 of any legislator, either prior to this date, or pending  
7 the outcome of your screening?

8 A. No.

9 Q. Have you asked any third parties to contact  
10 members of the General Assembly on your behalf, or are you  
11 aware of anyone attempting to intervene in this process on  
12 your behalf?

13 A. No.

14 Q. Since submitting your letter of intent to run for  
15 this seat, have you contacted any members of this  
16 Commission about your candidacy?

17 A. No.

18 Q. Do you understand that you're prohibited from  
19 seeking a pledge or commitment, directly or indirectly,  
20 until 48 hours after the formal release of the Commission's  
21 report, and are you aware of the penalties for violating  
22 the pledging rules?

23 A. Yes.

24 MR. DENNIS: Thank you. I would note that  
25 the Midlands Citizen's Committee reported that Mr.

1 Richardson is well qualified as to ethical fitness,  
2 professional ability, academic -- professional and academic  
3 ability, character, reputation, experience, and judicial  
4 temperament. The Committee found -- excuse me -- Mr.  
5 Richardson to be qualified as to constitutional  
6 qualifications, physical health and mental stability.

7 The Committee noted: "Mr. Richardson has  
8 broad experience, with less experience in criminal and  
9 family court. He is bright and has a good demeanor. He is  
10 high energy and obviously very capable. He was impressive  
11 to this Committee. Mr. Richardson is an outstanding  
12 candidate for justice of the South Carolina Supreme Court."

13 I would also note, Mr. Chairman, for the  
14 record, that any concerns raised during the investigation  
15 into Mr. Richardson were incorporated in to this  
16 questioning today. And I have nothing further.

17 SENATOR CAMPSSEN: Thank you. Do we have any  
18 questions from members? Any questions?

19 (Hearing none.)

20 EXAMINATION BY SENATOR CAMPSSEN:

21 **Q. Mr. Richardson, I want to ask a few questions**  
22 **that I've asked others.**

23 **First, you indicated in your statement, that**  
24 **Madison had indicated that the -- the judicial branch was**  
25 **going to be -- was considered the weakest branch.**

1           A.    That's right.

2           Q.    Of course that was before it was clear that the  
3   judicial branch would stand in review, the  
4   constitutionality of legislative enactments of the  
5   legislative branch, that also involved the executive  
6   branches in the veto power.  And that didn't -- that wasn't  
7   established clearly until *Marbury v. Madison*.

8                   And so -- and my question to you -- a lot of  
9   people would have the opinion that the judicial branch has  
10  become much more powerful than the Founders intended, and  
11  largely through exercise of that power of judicial review  
12  of the constitutionality of legislative enactments.

13                   And so my question to you is: What traits in a  
14  judge are important for a judge to demonstrate and embody,  
15  in order to keep the judiciary and the judicial branch from  
16  becoming too powerful and disrupting the Separation of  
17  Powers doctrine?  What characteristics, what traits in  
18  appellate judges are necessary to maintain that balance?

19           A.    Well, certainly, humility to the position.  This  
20  is -- you know, just as any public official is serving the  
21  public, and serving the institution of the democracy that  
22  we're in, I think remembering -- it was not just that it  
23  was said they're the weakest branch, that was also  
24  intended.  And I think that's the purpose for remembering  
25  how we got to where we are.  And remembering the rest of

1 that quote is, that they only decide cases and  
2 controversies. It only pronounces legal judgements.

3 And yet, we see the potential power of that. I  
4 think the court is -- can only answer questions asked of  
5 it, should only answer questions asked of it. And that  
6 doesn't mean that all the questions asked of the court  
7 should be answered.

8 I talked about some examples of the political  
9 question doctrine, which keeps the court in its proper  
10 role. And I think the description I've given of how to  
11 analyze constitutionality of statutes is very important,  
12 not just in the recitation that happens in most cases, but  
13 also in the actual decisions.

14 And I think keeping decisions within the issues  
15 necessary to resolve that case, whether it be no  
16 jurisdiction because it's a non-justiciable question, no  
17 subject matter jurisdiction because it's not given to the  
18 courts, those decisions are how the court speaks, or how  
19 the court protects and preserves the separation of powers.  
20 And that is a critical realization for every justice.

21 Frankly, every judge needs to have that. It's  
22 why subject matter jurisdiction is raised at any point,  
23 whether it's raised by any parties or not, the judge should  
24 sua sponte the court, should sua sponte to determine those  
25 questions that it should not -- it should not answer.

1           So the particular qualities each of us -- each  
2 justice would have, not only humility, but would need to be  
3 a student of history. Because if we're caught up in the  
4 popular press reporting of -- particularly out of  
5 Washington, of issues -- a extensive number of issues that  
6 are -- that are policy-type issues that are being driven  
7 from the courts, that is a -- that's not going to preserve  
8 and protect the legacy and legitimacy of the court.

9           And I think there have been a lot of challenges  
10 over the years, if you -- if you do think back and read,  
11 not just Marbury v. Madison, but through Dred Scott and  
12 Plessy, and to -- and to Brown, you see there are times  
13 when the court must step forward, and say the words as  
14 they're are written mean what they -- what they say, and  
15 the changes to that should be done through the democratic  
16 process.

17           But -- but ultimately, the answer is -- is the --  
18 is the humility, I think, that each judge is not -- is not  
19 there for their personal views; they're there for fidelity  
20 to the law. And the decision must be -- must be based on  
21 the law. And when the laws need to be changed, even the  
22 Constitution, there's a democratic process for that.

23           **Q. Do you believe that the duty of the Supreme Court**  
24 **is to interpret the words of the Constitution only**  
25 **according to the meaning that they had when it was -- when**

1 **the provision was adopted?**

2 A. I think that's certainly where you start. Even  
3 Justice Kagan, at the -- at the dedication of the George  
4 Mason Law School, in favor of Scalia, recognized that every  
5 judge now starts there with the language and with the  
6 original intent. And mainly, because that is where --  
7 that's how we got to where we are. It's the words that  
8 bind us. It's what everyone knows. They can go back to  
9 the solid rock of the law and start there.

10 But we also know that there are factual  
11 circumstances where the application of that law could not  
12 have been contemplated. I think Scalia got it right on the  
13 unreasonable search, using an infrared gun shooting  
14 someone's house shouldn't be done without a warrant with  
15 probable cause, because it's more invasive. That's not a  
16 different constitutional principle, but it is a different  
17 application.

18 And that's -- and so I think that -- you know,  
19 that, that's a distinction that is important to be made in  
20 what you're asking me.

21 **Q. Do you believe the Supreme Court has the power to**  
22 **order remedial legislative action to settle a case brought**  
23 **against the State of South Carolina?**

24 A. When there is a proper case or controversy that's  
25 not a political question, that is within the requirements

1 of the -- of the court system to resolve disputes, and it  
2 typically -- when you -- when you -- you used the word  
3 "legislative," it typically involves a declaratory  
4 judgement of some sort, rather than the affirmative  
5 remedial ordering of particular results.

6 And there's a reason for that. And it's because  
7 of separation of powers. And there's a very definite line,  
8 that I illustrated by my example of the payments out of the  
9 treasuries, where the amount and to what it's appropriated  
10 is not a justiciable -- it's a non-justiciable political  
11 question; but whether that payment was made according to an  
12 appropriate -- a appropriation is a question for the  
13 courts.

14 But without knowing the facts in a -- in that  
15 case, I can't think of a scenario where a discretionary  
16 legislative act would be subject to a -- an order by the  
17 court for a particular result.

18 **Q. I can think of one. And I won't mention it.**

19 SENATOR CAMPSER: Does anyone -- thank you  
20 for answering that. Does anyone have any -- have any other  
21 questions? Any members. Okay. Senator Malloy.

22 SENATOR MALLOY: Thank you.

23 EXAMINATION BY SENATOR MALLOY:

24 **Q. So first, I want to end up thank you for**  
25 **offering, and just ask you the same questions I've asked**

1 everybody else. One of the things that I have a difficult  
2 time watching is the Supreme Court justices come over here  
3 and advocate for money to end up funding the judiciary. So  
4 I just want to get your thoughts on whether or not that we  
5 should maybe go to a percentage basis of a general  
6 appropriations bill, or if you have any other ideas about  
7 how the cost of judicial administration could be reduced.

8 A. Thank you. And I'm obviously not here in that  
9 capacity. And it's an unfortunate one. Because as we've  
10 talked already, the Supreme Courtm or the courts in  
11 general, are the weakest branch because they don't have an  
12 army to enforce their rules, and they don't have the purse  
13 strings to fund their obligations.

14 But we do know that there is an obligation in the  
15 Preamble of the Constitution, and in so many other parts of  
16 our founding documents, that we must establish justice.  
17 And that cannot be done without adequate courts. And part  
18 of what we've done to be responsive to those that need  
19 justice delivered in our state, in business courts and drug  
20 courts and alternative courts, have fast jury trial dockets  
21 and other pilot projects to make sure that we're doing the  
22 most we can with the limited resources that we have. And  
23 it will always be limited.

24 And while I'm sure those that have to come over  
25 and advocate for adequate funding would like it to be a

1 percentage, or some kind of automatic appropriation, we've  
2 already talked about how the amount, and to what is  
3 appropriated, is uniquely and completely within the  
4 constitutional authority of the legislative branch.

5 Q. I'm going to jump around some --

6 A. Yes, sir.

7 Q. -- to cover the questions. Do you believe that  
8 the Supreme Court has the power to issue a writ of mandamus  
9 against the General Assembly, or a member, in order to get  
10 the legislature to perform or not perform a certain action?  
11 And I realize you've answered some of that in your -- some  
12 of your earlier statements.

13 A. But a writ of mandamus is an extraordinary writ,  
14 and sometimes called the most extraordinary writ, because  
15 of how punitive in some ways it is to the person who is not  
16 acting. But it is never proper to issue a writ of mandamus  
17 on a discretionary matter. And so if you -- with what you  
18 asked in a legislative function, it would -- it would not  
19 be a proper -- it would not be proper.

20 Q. One of the other questions was that we've been  
21 all witnesses to split decisions, dissents from our court,  
22 in understanding that out litigants and lawyers and people  
23 impacted by the law, generally, we understand that  
24 unanimous decision of the court provide a clear statement  
25 of the law to those that may be impacted. Under what

1     **circumstances do you feel it would be necessary to write a**  
2     **dissent or concurrence? And then what would you do to help**  
3     **avoid some split decisions?**

4           A.     And if you don't mind in reverse, I think it's  
5     very important that the court try to speak unanimously.  
6     It's not possible, always, because there are five justices  
7     that are engaging in a deliberative process for a  
8     collection of decision.

9           I will say that, not completely unlike in the  
10    Enrolled Bill Act -- Enrolled Bill Doctrine, is that once  
11    the Supreme Court speaks, that is the collective decision.  
12    Whether it's three-two or five-oh, the supreme -- the  
13    Constitution says the concurrence of three justices is  
14    needed to overturn a lower court decision, and then that is  
15    the decision of the court.

16           What we see in very tough cases, that the -- that  
17    affect the fabric of society, *Brown v. Board of Education*,  
18    and of course the Muhammad Ali case, when there needed to  
19    be in those times unanimity, people of good will but of  
20    very different view points and of very different ideas  
21    about the law, put aside those personal views to uphold the  
22    law and come together. And I think that, that is -- should  
23    be the goal, and is necessary for -- particularly for those  
24    tough decisions.

25           The questions about when I might feel compelled

1 to write -- and I would have to be compelled to write a  
2 dissent or a concurrence, for that matter, I think a  
3 concurrence is easier. You want to work with an authoring  
4 justice. If there are changes, if there are limitations  
5 that you would like to see, something that you might see as  
6 -- as a -- as a part of the decision beyond the issues  
7 needed to be decided in this case, you may need to publicly  
8 say that if you cannot privately get collaborative decision  
9 to address those issues.

10 But it would -- it should not be the norm, and it  
11 shouldn't be something that is -- that, for example, in my  
12 kind -- in my experience, I've never understood the  
13 concurring end result. I can understand disagreeing and  
14 needing to express that, but I don't -- I don't understand  
15 that particular view. I may change my mind, after dealing  
16 with some of the tough issues that the court has.

17 But dissenting opinions can be helpful. We know  
18 from the example I used earlier, Chief Justice Rehnquist  
19 was the Lone Ranger and the lone dissenter for a number of  
20 legal issues that are now well settled law. And I know  
21 from my own grandfather's example, that ultimately became  
22 the majority opinion in *McCall v. Batson*, abolishing  
23 sovereign immunity, that his dissents in the '70s got us to  
24 that point of getting it -- getting it right. It was a  
25 dissent -- I can't remember which John Marshall Harlan --

1 but that dissented in Plessy to say this is not right. And  
2 of course the -- in his Briggs v. Elliott dissent.

3 So I -- I would not foreclose writing a dissent.  
4 But the fact that we can just name a few of the ones who  
5 are the most memorable, I think on the -- on the -- on the  
6 federal level, and of course we've seen some more recent  
7 that are -- that are trying to put down markers for where  
8 the court should return into its proper role, those are  
9 important opinions that are written.

10 And so I don't think that we should sacrifice  
11 getting it right for unanimity.

12 **Q. Let me shift a little bit, and ask you do you**  
13 **believe that the current system that we have for**  
14 **disciplining lawyers and judges is effective? Why or why**  
15 **not?**

16 A. I think it is effective. Part of the proof of  
17 that is you see the discipline on the front of the advance  
18 sheets, fairly regularly. We see suspensions. We see  
19 disbarments. We see public reprimands. And obviously, we  
20 need those. And if we're not doing that, if we're not  
21 educating the rest of the bar, and, frankly, the public,  
22 about bad lawyering, bad judges, then we're not doing our  
23 job and we shouldn't be entitled to continue to regulate  
24 it.

25 But with that constitutional authority comes

1 great responsibility. And I think we're doing a pretty  
2 good job of it. Obviously, there's some reluctance of  
3 folks who probably witness it, not -- you know, not making  
4 the complaint. But the system is designed to encourage  
5 that to provide some confidentiality to encourage that.

6 And maybe as important as the disciplinary  
7 process is that what I think is very effective, lawyers  
8 helping lawyers, folks that get in to trouble from  
9 addictions to drugs or alcohol, that tend to lead to harm  
10 to clients. And that's a critical piece of this.

11 **Q. Do you believe that all citizens in our state**  
12 **have adequate access to legal help in our legal systems?**  
13 **And you can expand on that.**

14 A. As the Senator knows, I've chaired the Access to  
15 Justice Commission, which is charged by the Supreme Court  
16 to ensure civil legal access to all the conference of chief  
17 justices as asked, all of the states to have an  
18 aspirational goal of a hundred percent access to civil  
19 legal assistance where needed. It doesn't mean provided by  
20 the state or tax payers. It's pro bono. It's the Legal  
21 Services Corporation through the South Carolina Legal  
22 Services, the frontline law firm here.

23 But nobody that I know believes that we're --  
24 we're anywhere close to a hundred percent. Many folks who  
25 are suffering and facing legal challenges don't even know

1 they have a legal problem. And so there's a lot of work  
2 that needs to be done, a lot that the courts and the legal  
3 profession needs to do. It needs to be a public/private  
4 partnership, which it already is, through fees and also  
5 appropriations at the federal level.

6 But it's an issue in South Carolina, on so many  
7 fronts. Child support enforcement, for example, is an  
8 issue in this world. And I thought -- I know y'all have  
9 seen or heard the numbers, or can get them, that billions  
10 of dollars are being lost in our economy, by the failure to  
11 provide adequate legal assistance to all those that need  
12 it; families aren't able to get divorces to move on and get  
13 a fresh economic start; veterans come back and have housing  
14 and credit issues because they're not being provided  
15 adequate legal assistance.

16 So I think it's one of the areas which you will  
17 see the Supreme Court to continue to work on. And  
18 certainly, me personally, I'm committed to continue to try  
19 and ensure civil legal access to justice for all.

20 **Q. And final the two: One is, what has been your**  
21 **greatest accomplishment in your legal career? And then I'm**  
22 **going to ask you maybe personal too.**

23 A. That's pretty personal, because it requires a  
24 judgement of -- of a legal career. And frankly, I've  
25 appreciate the thorough and effective vetting process for

1 judges that this application and training process has been;  
2 it's allowed me to look back over my career, you know.

3 And your question was most --

4 **Q. I said, "What's been your greatest legal**  
5 **accomplishment"?**

6 A. Greatest legal accomplishment --

7 **Q. A little bit harder, 'cause most candidates go**  
8 **into a group of -- a group of things.**

9 A. Right. And I may be proud of having represented  
10 all the foster care children in the state, and getting a --  
11 an agreement about how to -- how to provide some systemic  
12 change that will have maybe the most impact.

13 But I wouldn't consider that my greatest.  
14 Because I think that the Kiawah case would not have  
15 happened without my involvement, and I think that the vast  
16 majority of lawyers in Charleston, much less the rest of  
17 the state, don't know I had anything to do with it. And  
18 yet, in terms of the challenges, the fact that we actually  
19 were able to -- a hard fought, a very, very contentious  
20 legal fight, decided the week of the 2012 PGA Tour  
21 Championship, where they were national and international  
22 press all over the place, and finding in a result that  
23 ended up getting all of the folks who were owners of that,  
24 the benefit of their ownership, and allowing the -- you  
25 know, what is -- what really a crown jewel of sorts in our

1 -- in our state and our tourism industry, and in attracting  
2 some of the most talented and best retirees in the country,  
3 -- in the world, to South Carolina.

4 In terms of greatest, I think that, that probably  
5 would have happened, and certainly not that way, without my  
6 involvement.

7 **Q. And one I think I asked one of the other**  
8 **candidates: Your mentor in the judiciary during your**  
9 **lifetime, because we mention a lot of judges, and obviously**  
10 **we go into philosophy and what we learn from them. If you**  
11 **want to talk about that.**

12 A. Yes, it's a difficult question for me. Because I  
13 -- in some ways I have an embarrassment of riches in that  
14 front. Of course my grandfather, I sit at his desk every  
15 day, he certainly inspired me to be here today, and to care  
16 as much as I do about the legacy of the Supreme Court.

17 But there -- there's so many others that I've  
18 talked about publicly, on whose shoulders we stand, and  
19 that is hard -- is a list that includes judges like Judge  
20 Blatt, who has been part of our lives for our entire life -  
21 - certainly as much as his. And Judge Perry has certainly  
22 been there. You know from my recommendations that Judge  
23 Anderson -- Joe Anderson is somebody who has been very  
24 close to me, from when he babysat me when he was in law  
25 school to -- to being a very strong advocate on my behalf.

1           And, you know, and of course the judges that I  
2           clerked for who have been, you know, very close personal  
3           friends, and in many ways, taught me more about the type of  
4           person I wanted to be than just about the law. And that's  
5           particularly -- particularly true for those -- those  
6           judges.

7                         SENATOR MALLOY: Thank you.

8                         SENATOR CAMPSEN: Thank you. Any other  
9           questions?

10                        (Hearing none.)

11                        SENATOR CAMPSEN: Okay. Mr. Richardson, thank  
12           you for appearing before us. That concludes this portion  
13           of our screening process. As you know, the record will  
14           remain open until the formal release of the report of  
15           qualifications. And you may be called back at any such  
16           time, if the need arises. I thank you for offering and  
17           thank you for your service to South Carolina.

18                        MR. RICHARDSON: Thank you very much. Thank  
19           you-all.

20                        SENATOR CAMPSEN: Do we need to go in an  
21           executive session. Do we need a five-minute break, maybe?  
22           A five-minute break. We have lunch coming in, and then  
23           we'll go into executive session.

24                        (Off the record from 1:11 p.m. to 2:05 p.m.)

25                        SENATOR CAMPSEN: We're convening the

1 Commission, again, after breaking for lunch. I call the  
2 meeting back to order, and just for the purpose of then  
3 entertaining a motion from Representative Smith, to go into  
4 executive session to discuss the vote procedure --

5 REPRESENTATIVE BANNISTER: Second.

6 SENATOR CAMPSSEN: -- and get -- receive  
7 advice counsel -- advice from counsel. We have a motion  
8 from Representative Smith, and a second Representative  
9 Bannister. Any discussion?

10 (Hearing none.)

11 SENATOR CAMPSSEN: There being no discussion,  
12 we move immediately to a vote. All those in favor indicate  
13 by saying "aye".

14 (At this time the members audibly say "aye.")

15 SENATOR CAMPSSEN: Opposed?

16 (Hearing none.)

17 SENATOR CAMPSSEN: The ayes have it. We are  
18 now in executive session.

19 (Off-the-record executive session.)

20 SENATOR CAMPSSEN: We are back on the record,  
21 having come out of executive session. And now we will  
22 proceed to voting on candidates. And no votes were taken  
23 and no action was taken in executive session. And now we  
24 are going to vote upon the qualifications and nomination of  
25 candidates for the Supreme Court.

1                   SENATOR MALLOY: Mr. Chair, I would move  
2 that all seven candidates are deemed qualified.

3                   SENATOR CAMPSSEN: We have a motion that all  
4 seven candidates be deemed qualified? Do we have a -- do  
5 we have a second?

6                   MR. SAFRAN: Second.

7                   SENATOR CAMPSSEN: Any discussion?

8                   SENATOR MALLOY: I would ask we vote for  
9 them in bulk qualified.

10                  SENATOR CAMPSSEN: Being no discussion, we'll  
11 move immediately to a vote, to vote for them, finding them  
12 qualified en masse, all of the candidates. All those in  
13 favor, indicate by raising your hand.

14                  (Commission members raise their hand.)

15                  SENATOR CAMPSSEN: Those opposed?

16                  (Hearing none.)

17                  SENATOR CAMPSSEN: It will be unanimous. Now  
18 I'm going to turn it over to Ms. Brogdon, who will explain,  
19 briefly, the voting process. And she will call the roll  
20 for the votes, since I'll be casting a vote myself.

21                  MS. BROGDON: Thank you, Mr. Chairman. Just  
22 a quick rundown of the voting procedure, one more time, to  
23 make sure that everybody's on the same page and  
24 understands. The chairman will call the names of the  
25 qualified candidates in alphabetical order. Each

1 Commission member has three votes to pass to find an  
2 individual qualified and nominated.

3 Any candidate that receives six or more  
4 votes will be considered qualified and nominated at the end  
5 of that vote. Unless there is a tie, and more than three  
6 candidates receive six or more votes.

7 Any candidate that does not get any votes  
8 will be removed from consideration on any subsequent ballot  
9 that occurs.

10 Does anybody have any questions?

11 (Hearing none.)

12 MS. BROGDON: Okay. So the first candidate  
13 is the Honorable Ralph King "Tripp" Anderson. Raise your  
14 hands if you want to vote Judge Anderson nominated.

15 (Commission members cast their vote.)

16 SENATOR CAMPSSEN: That's eight votes. So  
17 Judge Anderson will be nominated.

18 The next candidate is the Honorable Diane  
19 Schafer Goodstein. Please raise your hand if you want to  
20 vote her nominated.

21 (Commission members cast their vote.)

22 MS. BROGDON: That's four votes for Judge  
23 Goodstein. The next candidate is the Honorable George C. -

24 -

25 SENATOR CAMPSSEN: And to be clear: Everyone

1 has three votes in this first round, correct?

2 MS. BROGDON: You can only vote three times.

3 The next candidate is the Honorable George  
4 C. James, Jr. Please raise your hands if you want to vote  
5 him nominated.

6 (Commission members cast their vote.)

7 MS. BROGDON: That's five votes for Judge  
8 James.

9 The next candidate is the Honorable R. Keith  
10 Kelly. Please raise your hands if you want to vote him  
11 nominated.

12 (Commission members cast their vote.)

13 MS. BROGDON: That's three votes for Judge  
14 Kelly.

15 The next candidate is the Honorable Carmen  
16 Tevis Mullen. Please raise your hand if you want to vote  
17 her nominated.

18 (Commission members cast their vote.)

19 MS. BROGDON: That's four votes for Judge  
20 Mullen.

21 The next candidate is John Shannon Nichols.  
22 Please raise your hand to vote him nominated.

23 (Commission members cast their vote.)

24 MS. BROGDON: That's three votes for Mr.  
25 Nichols -- four. Four votes for Mr. Nichols.

1                   And finally, the next candidate is Matthew  
2 T. Richardson. Please raise your hands if you want to vote  
3 him nominated.

4                   (Commission members cast their vote.)

5                   MS. BROGDON: That's two votes for Mr.  
6 Richardson.

7                   So Judge Anderson is nominated. And we'll  
8 now proceed into a second phase of votes. With none of the  
9 candidates eliminated, since everybody received at least  
10 one vote, everybody will now have two votes.

11                   I'll begin again in alphabetical order. The  
12 Honorable Diane Schafer Goodstein. Please raise your hand  
13 if you want her nominated.

14                   (Commission members cast their vote.)

15                   MS. BROGDON: That's four votes for Judge  
16 Goodstein.

17                   The next candidate is the Honorable George  
18 C. James, Jr. Please raise your hand if you want to vote  
19 him nominated.

20                   (Commission members cast their vote.)

21                   MS. BROGDON: That's six votes for Judge  
22 James.

23                   The next candidate is the Honorable R. Keith  
24 Kelly. Please raise your hand if you want to vote him  
25 nominated.

1 (Commission members cast their vote.)

2 MS. BROGDON: That's one vote for Judge  
3 Kelly.

4 The next candidate is the Honorable Carmen  
5 Tevis Mullen. Please raise your hand if you want to vote  
6 her nominated.

7 (Commission members cast their vote.)

8 MS. BROGDON: That's three votes for Judge  
9 Mullen.

10 The next candidate is John Shannon Nichols.  
11 Please raise your hand if you want to vote him nominated.

12 (Commission members cast their vote.)

13 MS. BROGDON: That's four votes for Mr.  
14 Nichols.

15 The last candidate, Matthew T. Richardson.  
16 Please raise your hand if you want to vote him nominated.

17 (Commission members cast their vote.)

18 MS. BROGDON: That's two votes for Mr.  
19 Richardson. So in that round of voting, Judge James is  
20 nominated, as he received six votes. No other candidate is  
21 eliminated, because everybody received at least one vote.

22 And in the next round of voting --

23 REPRESENTATIVE BANNISTER: I've got an -- I  
24 got an issue. Can somebody add up the total votes to make  
25 sure we only had 20 votes?

1 MS. BROGDON: Definitely. In the second  
2 round?

3 (Off-the-record discussion.)

4 MS. BROGDON: So we have Judge Anderson and  
5 Judge James nominated. In the -- in this next round of  
6 voting, everybody will only have one vote. Y'all ready?

7 The Honorable Diane Shafer Goodstein.  
8 Please raise your hand if you want to vote her nominated.

9 (Commission members cast their vote.)

10 MS. BROGDON: That's two votes for Judge  
11 Goodstein.

12 The next candidate is the Honorable R. Keith  
13 Kelly. Please raise your hand if you want to vote him  
14 nominated.

15 (Commission members cast their vote.)

16 MS. BROGDON: The next candidate is the  
17 Honorable Carmen Tevis Mullen. Please raise your hand if  
18 you want to vote her nominated.

19 (Commission members cast their vote.)

20 MS. BROGDON: That's three votes for Judge  
21 Mullen.

22 The next candidate is John Shannon Nichols.  
23 Please raise your hand if you want to vote him nominated.

24 (Commission members cast their vote.)

25 MS. BROGDON: That's three votes for Mr.

1 Nichols.

2 The last candidate is Matthew T. Richardson.

3 Please raise your hand if you want to vote him nominated.

4 (Commission members cast their vote.)

5 MS. BROGDON: That's one vote for Mr.  
6 Richardson. No candidate received six or more votes in  
7 that round of voting, so we'll proceed to another round of  
8 voting.

9 REPRESENTATIVE BANNISTER: Can you tell us  
10 the votes that the candidates received?

11 MS. BROGDON: I can. Judge Goodstein  
12 received two votes, Judge Kelly received one vote, Judge  
13 Mullen received three, Mr. Nichols received three, and Mr.  
14 Richardson received one. So in the next round of voting  
15 again everybody will have one vote.

16 We'll start again. The Honorable Diane  
17 Shafer Goodstein, please raise your hands if you want to  
18 vote her nominated.

19 (Commission members cast their vote.)

20 MS. BROGDON: That's two votes for Judge  
21 Goodstein.

22 The Honorable R. Keith Kelly. Please raise  
23 your hands if you want to vote him nominated.

24 (Commission members cast their vote.)

25 MS. BROGDON: That's one vote for Judge

1 Kelly.

2                   The next candidate is the Honorable Carmen  
3 Tevis Mullen. Please raise your hands if you want to vote  
4 her nominated.

5                   (Commission members cast their vote.)

6                   MS. BROGDON: That's three votes for Judge  
7 Mullen.

8                   The next candidate is Mr. John Shannon  
9 Nichols. Please raise your hands if you want to vote him  
10 nominated.

11                   (Commission members cast their vote.)

12                   MS. BROGDON: That's three votes for Mr.  
13 Nichols.

14                   The last candidate is Mr. Matthew T.  
15 Richardson. Please raise your hands if you want to vote  
16 him nominated.

17                   (Commission members cast their vote.)

18                   MS. BROGDON: That's one vote for Mr.  
19 Richardson. Those votes were all identical to the previous  
20 vote. Everybody received at least one vote. No candidate  
21 received six or more votes, so we will proceed to another  
22 round.

23                   SENATOR MALLOY: Mr. Chair, I move that we  
24 have a five-minute recess.

25                   MR. SAFRAN: I second the motion.

1                   SENATOR CAMPSSEN: Okay. We have a motion  
2 and a second for a five-minute recess. All in favor  
3 indicate by saying "aye."

4                   (At this time the members audibly say "aye.")

5                   SENATOR CAMPSSEN: Opposed?

6                   (Hearing none.)

7                   SENATOR CAMPSSEN: The ayes have it.

8                   (Off the record from 2:31 p.m. to 3:08 p.m.)

9                   SENATOR CAMPSSEN: So we're reconvening from  
10 our five-minute break. We have -- everyone has one vote  
11 left to cast, and Ms. Brogdon is going to call to roll.  
12 The candidates that have already been chosen or nominated  
13 are Tripp Anderson and Buck James. And so what we have  
14 left is Diane Goodstein, Keith Kelly, Carmen Mullen, John  
15 Nichols, and Matthew Richardson.

16                   And so she will call the roll. Everyone has  
17 one vote for those remaining un-nominated candidates that I  
18 just mentioned. Any questions about that, where we are  
19 procedurally?

20                   (Hearing none.)

21                   MS. BROGDON: So the first candidate is the  
22 Honorable Diane Shafer Goodstein. Please raise your hands  
23 if you want to find her nominated.

24                   (Commission members cast their vote.)

25                   MS. BROGDON: That's nine for Judge

1 Goodstein.

2                   The next candidate is the Honorable R. Keith  
3 Kelly. Please raise your hands if you want to find him  
4 nominated.

5                   (Commission members cast their vote.)

6                   MS. BROGDON: That's no votes for Judge  
7 Kelly.

8                   The next candidate is the Honorable Carmen  
9 Tevis Mullen. Please raise your hands if you want to vote  
10 to find her nominated.

11                   (Commission members cast their vote.)

12                   MS. BROGDON: That's one vote for Judge  
13 Mullen. That should be all the votes.

14                   SENATOR CAMPSSEN: So all the votes have been  
15 cast in that round. There were how many for Judge  
16 Goodstein?

17                   MS. BROGDON: Nine for Judge Goodstein.

18                   SENATOR CAMPSSEN: Nine for Judge Goodstein,  
19 and one for Judge Mullen. So all the votes were cast in  
20 that round. And so --

21                   MS. BROGDON: So Judge Goodstein is  
22 nominated.

23                   SENATOR CAMPSSEN: So what we have done is we  
24 have nominated Judge Tripp Anderson, Judge Buck James, and  
25 Judge Diane Goodstein for the state Supreme Court, and

1 found all candidates qualified. And you need to fill out  
2 your ballot form that reflects the votes that you cast.

3 MS. BROGDON: It's behind Tab G.

4 SENATOR CAMPSSEN: It's behind Tab G.

5 And tomorrow morning we will reconvene at  
6 9:30, correct?

7 MS. BROGDON: Yes.

8 (Off-the-record discussion.)

9 SENATOR CAMPSSEN: Senator Hembree.

10 SENATOR HEMBREE: A question for Elizabeth:  
11 If I'm understanding this right, we should check the boxes  
12 next to Anderson, Goodstein, and James, qualified and  
13 nominated; and then check the other four boxes qualified?  
14 Would that be how this should look?

15 SENATOR CAMPSSEN: If that's the way you  
16 voted, yes.

17 MS. BROGDON: Only if that's the way you  
18 voted.

19 SENATOR HEMBREE: Okay. On the last --  
20 okay.

21 SENATOR CAMPSSEN: For clarification to the  
22 Commission, I just want to make it clear that all the votes  
23 previously cast are on the record. So the votes that you  
24 previously cast will appear on the record. And so what you  
25 are doing is, you are casting your ballot for the final

1 vote that you cast. But anyone interested can go back on  
2 the record and see the previous votes that you cast.

3 SENATOR MALLOY: Mr. Chairman.

4 SENATOR CAMPSSEN: Yes, Senator Malloy.

5 SENATOR MALLOY: Thank you. Before we --  
6 before we recede for -- for -- for the day, I'd just like  
7 to put on the record, that for each one of these candidates  
8 qualified that were running, obviously, we all have a  
9 relationship with them by virtue of being in the same  
10 profession; that we run into contact with them from time to  
11 time, and have -- have a relationship with most. None of  
12 it will affect our ability to vote on this commission.

13 I just want to end up making certain that we  
14 put that on the record; that we -- that we see them  
15 regularly, we appear -- we appear in front of them. We may  
16 see them at receptions, doing these kinds of things, and  
17 any other professional interactions, so that we can make  
18 certain that we can avoid the appearance of impropriety,  
19 and make sure they we're transparent.

20 I'm just saying that we've seen -- the fact  
21 that we had anything personal with them at funerals and  
22 receptions and other things where we will -- we will be  
23 meet in the same place.

24 SENATOR CAMPSSEN: Thank you, Senator. So  
25 noted. Senator Hembree.

1                   SENATOR HEMBREE: Just briefly, Mr.  
2 Chairman. I just wanted to, on the record, thank Senator  
3 Malloy for buying our lunch today. It was very good. I  
4 appreciate it.

5                   SENATOR CAMPSSEN: Unless there is any more  
6 business that individual members would like to raise before  
7 the Commission. Does Representative Smith have something?  
8 He moves to adjourn. So Representative Smith moves to  
9 adjourn. We have a second. We have a second. Any  
10 discussion?

11                   (Hearing none.)

12                   SENATOR CAMPSSEN: No discussion. We'll move  
13 immediately to a vote. All those in favor -- until 9:30 in  
14 the morning, we reconvene, say "aye."

15                   (At this time the members audibly say "aye.")

16                   SENATOR CAMPSSEN: Opposed?

17                   (Hearing none.)

18                   SENATOR CAMPSSEN: The ayes have it.

19                   (There being nothing further, the proceedings  
20 concluded at 3:20 p.m.)

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